

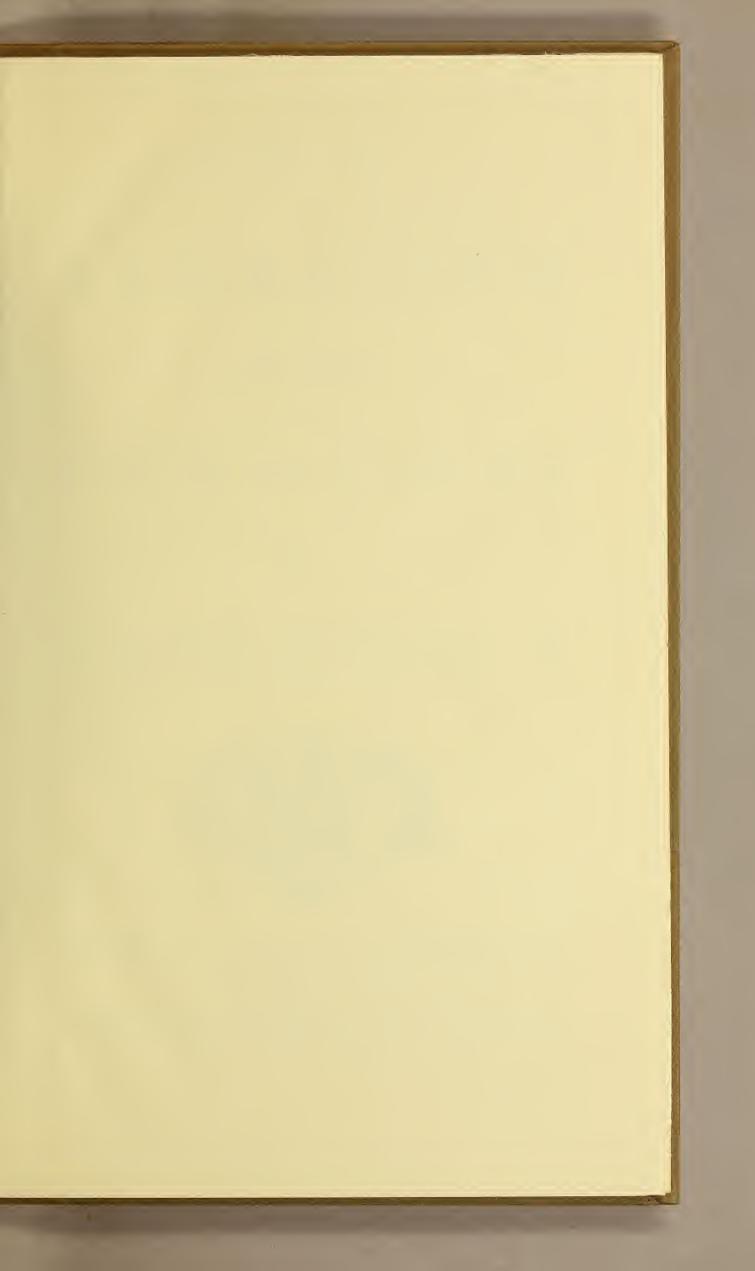
MICHAEL ZINMAN



John Carter Grown Library Grown University







ABRIEF

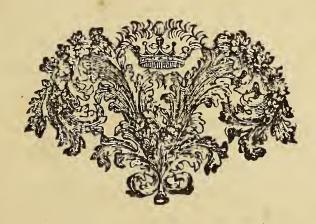
NARRATIVE

OF THE

CASE AND TRIAL

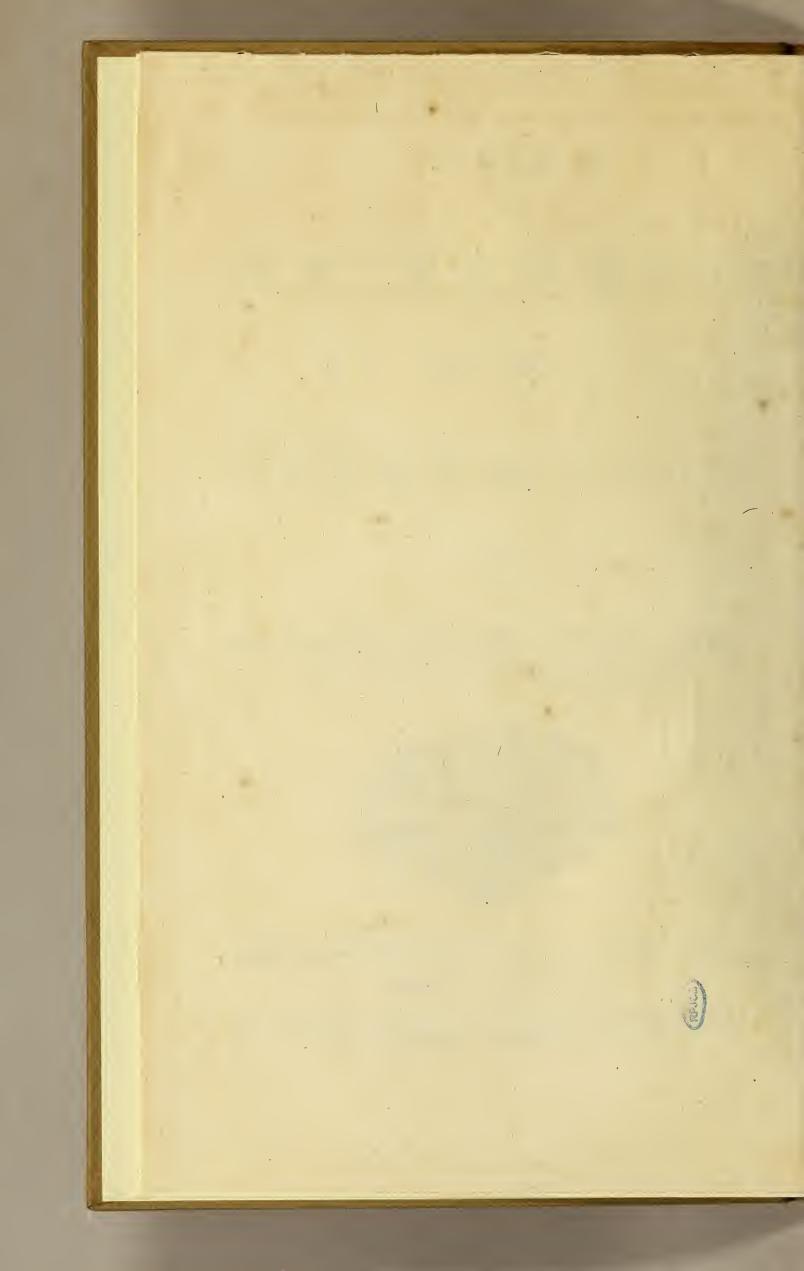
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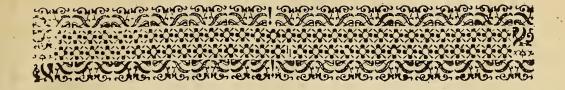
JOHN PETER ZENGER, Printer of the New-York Weekly-Journal.



NEW-YORK Printed:

LANCASTER Re-printed, and Sold by W. DUNLAF, at the New-Printing-Office, in Queen-Street, 1756.





BRIEF

NARRATIVE

S There was but one Printer in the Province of New-York, A state of the Printer in the Province of New-York, that printed a public News Paper, I was in Hopes, if I undertook to publish another, I might make it worth my while; and I soon found my Hopes were not groundless. My first Paper was printed November 5th, 1733, and I continued printing and publishing of them, (I thought to the Satisfaction of every Body) till the January following, when the Chief Justice was pleased to animadvert upon the Doctrine of Libels, in a long Charge given in Term to the Grand Jury, and afterwards on the third Tucsday of CEleber was again pleased to charge the Grand Jury in the following VVords.

1734, was again pleafed to charge the Grand Jury in the following VVords.

' Gentlemen, I shall conclude with reading a Paragraph or two out of the same Book, concerning Libels; they are arrived to that Height, that they call loudly for your Animadversion; it is high Time to put a Stop to them; for at the rate Things are now carried on, when all Order and Government is endeavoured to be trampled on; Reflections are cast upon Persons of all Degrees, must not these Things end in Sedition, if not timely prevented? Lemity, you have feen, will not avail: It becomes you then to enquire after the Offenders, that we may in a due Course of Law be enabled to punish them. If you Gentlemen, do not interpose, consider whether the ill Consequences that ' may arise from any Disturbances of the public Peace, may not in part, lie at

* Hankins, in his Chapter of Libels, confiders three Points, 1st, What stall to be faild to be a Libel. 2dly, Who are liable to be punished for it. 3dly, In what Manner they are to be punished. Under the 1st, he says, §, 7. Nor can there be any Doubt, but that a Writing which defames a private Person only, is as much a Libel as that which defames Person in a public Capacity, in as much as it manifestly tends to create ill Blood, and to cause a Disturbance of the public Peace; however, it is certain, that it is a very high Aggravation of a Libel, that it tends to seamfalize the Government, by resieving on these who are entrusted with the Administration of tuble Assays, which does not only endanger the public Peace, as all manification of tublic Affairs, which does not only endanger the public Peace, as all other Libels 40, by stirring up the Parties insmediately concerned in it, to Acts of Revenge; but also has a direct Tendency to breed in the People a Dislike of their Goscrnours, and incline them to Faction and Sedition. As to the 2d, Point he says, 5. 10. It is certain, not only be who composes or procures another to compose it, but also that he who publishes, or procures another to publish it, are in Danger of loing punished for it; and it is said not to be material whether he who disperses a Liebert and Thing of the Contests or Effects of it or not have nothing could be tel, knew any I bing of the Contents or Effects of it or not; for nothing could be

'more casy than to publish the most virulent Papers with the greatest Security, if the concealing the Purport of them from an illiterate Publisher, would make him safe in the dispersing them: Also, it has been said, that if he who hath either read a Libel hunself, or bath heard it read by another, do afterwards maliciously read or report any Part of it in the Presence of others, or lend or shew it to another, he is guilty of an unlawful Publication of it. Also, it hath been holden, that the copying of a Libel skall be a conclusive Evidence of the Publication of it, unless the Party can prove, that he delivered it to a Magistrate to examine it, in which Case the Act subsequent is said to explain the Intention precedent. But it seems to be the better Opinion, that he who first writes a Libel, distated by another, is thereby guilty of Making of it, and consequently punishable for the bare Writing; for it was no Libel till it was reduced to Writing.

'These, Gentlemen, are some of the Offences which are to make Part of your Enquiries; and if any other should arise in the Course of your Proceedings, in which you are at a Loss, or conceive any Doubts, upon your Application here, we will assist and direct you.'

The Grand Jury not indicting me as was expected, the Gentlemen of the Council proceeded to take my journals into Confideration, and fent the following Message to the General Assembly.

· Die Jovis, 3 bo. P. M. 17th of October, 1734.

A Message from the Council by Philip Cortland, in these VVords, to wit,

'That Board having had several of Zenger's New-York meekly Journals laid before them, and other seurcilous Papers, tending to alienate the Assertions of the People of this Province from his Majesty's Government, to raise Seditions and Tumults among the People of this Province, and to fill their Minds with a Contempt of His Majesty's Government: And considering the pernicious Consequences that may attend such growing Evils, if not speedily and effectually put a Stop to. And conceiving that the most likely Method to put a Stop to such bold and seditious Practices, to maintain the Dignity of His Majesty's Government, and to preserve the Peace thereof, would be by a Conference between a Committee of this Board, and a Committee of the Assertion bly; it is therefore ordered, That the Gentlemen of this Board, now assembled, or any seven of them, be a Committee, to join a Committee of the House of Representatives, in order to confer together, and to examine and enquire into the said Papers, and the Authors and VVriters thereof.'

- · Which Mcssage being read.
- Ordered, That the Members of this Houle, or any fourteen of them, do meet a Committee of the Council, at the Time and Place therein mentioned.

Die Veneris, 9 bo. A. M. 18 October, 1734.

Mr. Garretson from the Committee of this House reported, That they last Night met the Committee of the Council, on the subject Matter of their Message of Yesterday to this House; and that after several Preliminaries between the said Committees, the Gentlemen of the Council reduced to Writing, what they requested of this House, and delivered the same to the Chairman, who delivered it in at the Table, and being read, is in the Words following.

At a Committee of the Council held the 17th of October, 1734.

PRESENT.

Mr. Livingston, Mr. Kennedy, Mr. Chief Justice, Mr. Cortland. Mr. Clarke, Mr. Lane, Mr. Harrison, Mr. Horsmanden. Dr. Colden,

· Gentlemen,

THE Matters we request your Concurrence in, are, That Zenger's Papers; No. 7, 47, 48, 49, which were read, and which we now deliver, be burnt by the Hands of the common Hangman, as containing in them many Things derogatory of the Dignity of his Majesty's Government; restecting upon the Legislature, upon the most considerable Persons, in the most Distinguished Stations in the Province, and tending to raise Seditions and Tumples among Stations in the Province, and tending to raife Seditions and Tumults among the People thereof.

That you concur with us in the Addressing the Governour to issue His Proclamation, with a Promise of Reward for the Discovery of the Authors or

Writers of these Seditious Libels.

'That you concur with us in an Order for Profecuting the Printer thereof. 'That you concur with us in an Order to the Magistrates, to exert them-felves in the Execution of their Offices, in order to preserve the public Peace of the Province.

· By Order of the Committee,

Fred. Mr.

Tir. Garretson delivered likewise to the House the seto in the faid Request.

· Ordered, That the faid Papers be lodg'd with the Clerk that the Confideration thereof, and the faid Request, be refered e next.

Die Martis, 9 bo. A. M. 22 October, 1734.

The House according to Order proceeded to take into Consideration Request of a Committee of Council, delivered to a Committee of this House on the 16th Instant, as likewise of the several Papers therein referred to. And after several Debates upon the subject Matters, it was Ordered, That the said Papers and Request lie on the Table.

The Council finding the General Affembly would not do any Thing about it; they fent the tollowing Message to the House.

Die Sabbati, 9 bo. A. M. 2 November, 1734.

A Message from the Council by Mr. Livingston, desiring this House to return by him to that Board, the several seditious Journals of Zenger's No. 7, 47, 48, 49, which were delivered by a Committee of that Board to a Committee of this House, the 17th of October last, together with the Proposals of the Committee of that Board delivered therewith to a Committee of the Committee of the Board delivered therewith the Committee of the Committe the Committee of that Board, delivered therewith to a Committee of this · House; and then withdrew.

On Tuesday the 5th of November, 1734, the Quarter Sessions for the City of New-York began, when the Sheriff delivered to the Court an Order, which was read in these Words. At a Council held at Fort George, in New-York, the 2d. of November, 1734.

PRESENT.

His Excellency William Cosby, Capt. General and Governour in Chief, &c.
Mr. Clark, Mr. Livingston, Mr. Cortland,
Mr. Harrison, Mr. Kennedy, Mr. Lane,
* Dr. Colden, Mr. Chief Justice. Mr. Horsmanden.

WHEREAS by an Order of this Board of this Day, some of John Peter Zenger's Journals, intitled The New-York weekly Journal, containing the freshest Advices foreign and domestick, No. 7, 47, 48, 49, were ordered to be burnt by the Hands of the common Hangman, or Whipper, near the Pillory in this City, on Wednesday the 6th Instant, between the Hours of Eleven and Twelve in the Forenoon, as containing in them many Things tending to Sedition and Faction, to bring His Majetty's Government into Contempt, and to disturb the Peace thereof, and containing in them likewise, not only Residestions upon His Excellency the Governour in particular, the Legislature in general, but also upon the most considerable Persons in the most distinguished Stations in this Province. It is therefore ordered, That the Mayor, and Magistrates of this City, do attend at the Burning of the several Papers or Journals aforesaid, Numbered as above mentioned.

Fred. Morris, D. Cl. Con.

ert Lurting, Esq; Mayor of the City of New-York, and the Rest of for the said City and County.

which Order, the Court forbad the Entring thereof in their and many of them declared, that if it should be entered, wir Protest entered against it.

the 6th of November, the Sheriff of New-York moved the arter Sessions, to comply with the said Order, upon which one of men offered a Protest, which was read by the Clerk, and approved all the Aldermen, either expressly or by not objecting to it, and is as soluth.

! Whereas an Order has been served on this Court, in these Words.

[The Order as above incerted.]

And whereas this Court conceives, they are only to be commanded by the King's Mandatory Writs, authorized by Law, to which they conceive they have the Right of shewing Cause why they don't obey them, if they believe them improper to be obeyed, or by Orders which have some known Laws to authorize them: And whereas this Court conceives this Order to be no Mandatory Writ marranted by Lam, nor knows of no Law that authorizes the making the Order aforesaid; so they think themselves under no Obligation to obey it: Which Obedience, they think, would be in them, an opening a Door for arbitrary Commands, which, when once opened, they know not what Dangerous Consequences may attend it. Wherefore this Court conceives itself bound in Duty (for the Preservation of the Rights of this Corporation, and as much as they can, the LIBERTY OF THE PRESS, and the People of the Province, since an Assembly of the Province, and several

^{*} N. B. Doctor Colden was that Day at Esopus. 90 Miles from New-York, tho' mentioned as present in Council.

Grand Juries, bave refused to meddle with the Papers, when applied to by the

Council) to protest against the Order aforesaid, and to forbid all the Members of this Corporation, to pay any Obedience to it, until it be shewn to this Court, that the fame is Authorized by some known Law, which they neither know nor believe

" that it is.'

Court.

Upon reading of which, it was required of the Honourable Francis Harrison, Recorder of this Corporation, and one of the Members of the Council, (prefent at making faid Order) to shew by what Law or Authority the faid Order was made; upon which he spoke in Support of it, and cited the Case of Dr. Sacheverel's Sermon, which was by the House of Lords ordered to be burnt by the Hands of the Hangman, and that the Mayor and Aldermen of London should attend the doing of it. To which one of the Aldermen answered to this Purpose; That he conceived the Case was no ways parallel, because Doctor Sacheverel, and his Sermon, were impeached by the House of Commons of England, which is the Grand Jury of the Nation, and Representative of the whole People of England: That this their Impeachment they profecuted before the House of Lords, the greatest Court of Justice of Britain, and which beyond Memory of Man, has had Cognizance of Things of that Nature, that there Sacheverel had a fair Hearing in Defence of Himself and of his Sermon. And after that fair Hearing, he and his Sermon were justly, fairly, and legally condemned; that he had read the Case of Dr. Sacheverel, and thought he could charge his Memory, that the Judgment of the House of Lords in that Case was, That the Mayor and Sheriffs of London and Middlesex, only should attend the Burning of the Sermon, and not the Alderman And Cashar had been also been as the Alderman and Sheriffs of London and Middlesex, only should attend the Burning of the Sermon, and not the Alderman and Sheriffs of London and Middlesex, only should attend the Burning of the Sermon, and not the Aldermen: And further he remembered, that der upon that Judgment, was only directed to the Sheriffs of even to the Mayor, who did not attend the doing it; ar would Mr. Recorder shew, that the Governour and Counci as the House of Lords, and that the Papers ordered to b manner legally profecuted and condemned, there the Cafe might be to the Purpose; but without shewing that, it rather p fure ought not to be pronounced, till a fair Trial by a Compe.

Authority were first had. Mr. Recorder was desired to produce the whence he cited his Authorities, that the Court might judge of them them selves, and was told, That if he could produce sufficient Authorities to warranthis Order, they would readily obey it, but otherwise not. Upon which he said, he did not carry his Books about with him. To which it was answered, he might send for them, or order a Consable to setch them. Upon which he he might fend for them, or order a Constable to setch them. Upon which he arose, and at the lower End of the Table he mentioned, That Bishop Burnet's Pastoral Letter, was ordered by the House of Lords to be burnt by the High Bailiff of Westminster; upon which he abruptly went away, without waiting for an Answer or promising to bring his Books, and did not return sitting the

. After Mr. Recorder's Departure, it was moved that the *Protest* should be entered; to which it was answered, That the *Protest* could not be entered without entering also the Order, and it was not fit to take any Notice of it, and therefore it was proposed that no Notice should be taken in their Books of either,

which was unanimously agreed to by the Court.

The Sheriff then moved, that the Court would direct their Whipper to perform the faid Order; to which it was answered, That as he was the Officer of the Corporation, they would give no such Order. Soon after which the Court adjourned, and did not attend the Burning of the Papers, Asterwards about Noon, the Sheriff after reading the Numbers of the several Papers which were ordered to be burnt, delivered them unto the Hands of his own Negroe, and ordered him to put them into the Fire, which he did, at which Mr. Recorder, Feremiab Dunbar, Esq; and several of the Officers of the Garrison attended.

On the Lord's Day the 17th of November, 1734, I was taken and imprisoned by Virtue of a Warrant in these Words.

At a Council held at Fort George, in New-York, the 2d Day of November, · 1734.

PRESENT.

His Excellency William Cosby, Captain General and Governour in Chief, &c.

Mr. Clarke, Mr. Harrison, Mr. Kennedy, Mr. Lane, M. Chief Justice, Mr. Horsmanden. Mr. Livingston, Mr. Cortland,

IT is ordered that the Sheriff for the City of New-York, do forthwith take and apprehend John Peter Zenger, for printing and publishing several Seditious Libels, dispersed throughout his Journals or News Papers, intitled, The New-York Weekly Journal, containing the freshest Advices, foreign and domestick; as having in them many Things tending to raise Factions and Tumults, among the People of this Province, inflaming their Minds with Contempt of His Majesty's Government, and greatly disturbing the Peace thereof, and upon his taking the said John Peter Zenger, to commit him to the Prison or common Goal of the said City and County.

Fred. Morris, D. Cl. Con.

Fred. Morris, D. Cl. Con.

And being by Virtue of that Warrant fo imprisoned in the Goal, I was for vs denied the Use of Pen, Ink and Paper, and the Liberty of Speech ————Upon my Commitment, some Friends soon got a ring me before the Chief Justice, in order to my Discharge the Return whereos, on Wednesday the 20th of November ered Exceptions to the Return, and the Chief Justice ordered and publickly at the City-Hall, on the Saturday following.

Alexander and William Smith, of Council for me, and by Mr. Attorney General and Mr. Warrel, of Council against me, in Presence of some Huntreds of the Inhabitants; where my Council (saving a Benefit of Exception to the Illegality of the Warrant) insisted that I might be admitted to reasonable Bail. And to shew that it was my Right to be so, they offered Magna Charta, The Petition of Right, 3 Car. The Habeas Corpus Ast of 31 Car. 2. which directs the Sum in which Bail is to be taken, to be, 'according to the Quality of the Prisoner, and Nature of the Offence.' Also 2d Harkins, Chap. 13, §. 5. in these Words, But Justices must take Care, that under Pretence of demanding Instituted to Bail; for this is looked on as a great Grievance, and is complained of as such, by 1 W. and M. Sess. 2d. by which it is declared, That excessive Bail ought ont to be required.' It was also shewn, that the seven Bishops in King James Ild's Time, were charged with the like Crime that I stood charged with, were admitted to Bail on their own Recognizances, the Arch Bishop in King James Ild's Time, were charged with the like Crime that I flood charged with, were admitted to Bail on their own Recognizances, the Arch Bishop in King James Ild's Time, were charged with the like Crime that I flood charged with, were admitted to Bail on their own Recognizances, the Arch Bishop in King James Ild's Time, were charged with the like Crime that I flood charged with the second and to see and each of

Time, were charged with the like Crime that I flood charged with, were admitted to Bail on their own Recognizances, the Arch-Bishop in £.200 and each of the other fix in a £.100 apiece only. Sundry other Authorities and Arguments were produced and infifted on by my Council, to prove my Right to be admitted to moderate Bail, and to fuch Bail as was in my Power to give; and fundry Parts of History they produced, to shew how much the requiring excessive Bail had been resented by Parliament. And in order to Enable the Court to Judge what Surety was in my Power to Give, I made Affidavit, That (my Debts paid) I was not worth Forty Pounds, (the Tools of my Trade and wearing Apparel excepted.)

Some warm Expressions (to say no worse of them) were dropt on this Occafion, sufficiently known and resented by the Auditory, which for my Part I desire

may be buried in Oblivion: Upon the whole, it was Ordered that I might be admitted to Bail, myself in £.400 with two Sureties, each in £.200, and that I should be remanded till I gave it. And as this was ten Times more than was in my Power to counter-secure any Person in giving Bail for me, I conceived I could not ask any to become my Bail on these Terms; and therefore I returned to Goal, where I lay until Tuesday the 28th of Fanuary, 1734-5, being the last Day of that Term; and the Grand Jury having sound nothing against me, I expected to have been discharged from my imprisonment; But my Hones prove I expected to have been discharged from my imprisonment: But my Hopes proved vain; for the Attorney-General then charged me by Information, for printing and publishing Parts of my Journals No. 13, and 23, as being false, scandalous, malicious and seditious.

To this Information my Council appeared and offered Exceptions, leaving a Blank for inferting the Judges Commissions, which the Court were of Opinion not to receive till those Blanks were filled up. In the succeeding Vacation, the Judges gave Copies of their Commissions; and on Tuesday the 15th of April last, the first Day of the succeeding Term, my Council offered these Exceptions,

which were as follows.

The Attorney General,) On Information for a Misdemeanour. John Peter Zenger.

- Exceptions humbly offered by John Peter Zenger, to the Honourable James De Lancey, Esq; to judge in this Cause.
- The Defendant comes and prays Hearing of the Commission, by Virtue of which the Honourable James De Lancey, Esq; claims the Power and Authority ty to judge in this Cause, and it is read to him in these Wor

GEORGE the Second, by the Grace of God, of Great-Bri Ireland King, Defender of the Faith, &cc. To Our trusty and u De Lancey, Esq; We reposing special Trust and Considence in your many.

Alty and Learning, have assigned, constituted and appointed, and We do by these Free lity and Learning. fents, assign constitute and appoint you the said James De Lancey, to be Chief Justice in and over Our Province of New-York, in America, in the Room of Lewis Morro Efq; Giving, and by these Presents granting unto you, full Power, and lumful Authority, to hear, try and determine all Pleas whatsoever, civil, criminal and mixt, ac-

- cording to the Laws, Statutes and Customs of Our Kingdom of England, and the Laws and Usages of Our said Province of New-York, not being repugnant thereto, and Executions of all Judgments of the said Court to award, and to make such Rules and Orders in the said Court, as may be found convenient and useful, and as near as may be agreeable to the Rules and Orders of Our Courts of King's Bench, Common-Pleas and Exchequer in England. To have, hold and enjoy the fail Office or Place of Chief Justice, in and over Our said Province, with all and singular
 the Rights, Priviledges, Profits and Advantages, Salaries, Fees and Perquisites unto the faid Place belonging, or in any Ways appertaining, in as full and ample Manner as any Person beretofore Chief Justice of Our said Province, bath beld and enjoysed, or of Right ought to have held and enjoyed, the same, To you the said James
 De Lancey, Esq; for and during our Will and Pleasure. In Testimony whereof,
 we have caused these Our Letters to be made Patent, and the great Seal of Our
 Province of New-York to be hereunto affixed. Witness Our trusty and well beloved
 William Cossy, Esq; Our Captain General and Governour in Chief of Our Province
- WILLIAM COSBY, Esq; Our Captain General and Governour in Chief of Our Province of New-York, New-Jersey, and the Territories thereon depending in America,
- Vice-Admiral of the same, and Colonel in Our Army at Fort-George, in New-York, the Twenty first Day of August, in the seventh Year of Our Reign, Anno

Dominis 1733.

Which

Which being read and heard, the said John Peter Zenger, by Protestation on confessing nor submitting to the Power of any other Person to Judge in this Cause, doth except to the Power of the Honourable James De Lancey, Esq. atoresaid, to judge in this Cause, by Virtue of the Commission aforesaid, for these Reasons, viz.

' 1st. For that the Authority of a Judge of the King's Bench, in that Part of Great-Britain called England, by which the Cognizance of this Cause is claimed, is by the said Commission granted to the Honourable James De Lancey, 'Esq; aforesaid, only during Pleasure; whereas that Authority (by a Statute in that Case made and provided) ought to be granted during good Behaviour.

that Case made and provided) ought to be granted during good Behaviour.

2d. For that by the said Commission, the Jurisdiction and Authority of a Justice of the Court of Common-Pleas at Westminster, in that Part of Great-Britain called England, is granted to the said James De Lancey, Esq; which Justice of the King's Bench.

'3d. For that the Form of the said Commission, is not founded on, nor warranted by the Common Law, nor any Statute of England, nor of Great-Brits

tain, nor any Act of Assembly of this Colony.

'4th, For that it appears by the Commission aforesaid, that the same is granted under the Seal of this Colony, by his Excellency William Cosby, Esq; Governour thereof; and it appears not, that the same was granted, neither was the same granted by and with the Advice and Consent of his Majesty's Council of this Colony; without which Advice and Consent, his Excellency could not grant the same.

Wherefore, and for many other Defects in the said Commission, this Defendant humbly hopes, that the Honourable James De Lancey, Esq; will not take Cognizance of this Cause, by Virtue of the Commission aforesaid.

Was figned

James Alexander, William Smith.

were me same with the foregoing, including therein his Commission, which is in these Words.

GEORGE the fecond, by the Grace of God, of Great-Britain, France and Ireland King, Defender of the Faith, &c. To Our trufty and well beloved Frederick Philipse, Efq; Greeting: Whereas it is Our Care, that Justice be duly administred to Our Subjects within Our Province of New-York, and Territories thereon depending in America; and We reposing special Considence in your Integrity, Ability and Learning, have assigned, constituted and appointed, and We do by these Presents assign, constitute and appoint you the said Frederick Philipse, to be second Justice of Our Supream Court of Judicature for Our Province of New-York, in the Room of James De Lancey, Efq; Giving and granting unto you the said Frederick Philipse, full Power and Authority, with Our other Justices of Our said Supream Court, to bear, try and determine, all Pleas whatsoever, civil, criminal and mixt, according to the Laws, Statutes and Customs of Our Kingdom of England, and the Laws and Usages of Our said Province of New-York, not being repugnant thereto, and Executions of all Judgments of New-York, not being repugnant thereto, and Things, which any of Our Justices of either Bench, or Baron of the Exchequer, in Our said Kingdom of England, may or ought to do; and also to assist and orders in Our said Court, as shall be for the Good and Benefit of Our said Province; and as near as conveniently may be, to the Rules and Orders of Our said Courts in Our said Kingdom of England: To have, hold and enjoy, the said Office or Place of second Instice of Our said Province of New-York, together with all and singular the Rights, Priviledges, Salaries, Fees, Perquisites, Prosits and Advantages thereto, now or at any Time heretofore belonging, or in any wise

of Right appertaining; anto you the said Frederick Philipse, for and during Our Pleasure. In Testimony whereof, We have caused these Our Letters to be made Pattent, and the Great Seal of Our said Province of New-York, to be hereunto affixed, Witness Our trusty and well beloved William Cosby, Esq; Our Captain General and Governour in Chief, of Our Provinces of New-York, New-Jersey, and Territories thereon depending in America, Vice Admiral of the same, and Colonel in Our Army, &c. at Fort-George, in New-York, the Twenty-sirst Day of August, in the Seventh Year of Our Reign, Anno Domini, 1733:

Fred. Morris, D. Sec.

Tuesday, the 15th of April, 1735.

Mr. Alexander offered the above Exceptions to the Court, and prayed that they might be filed. Upon this the Chief Justice said to Mr. Alexander and Mr. Smith, That they ought well to consider the Consequences of what they offered; to which both answered, That they had well considered what they offered, and all the Consequences: And Mr. Smith added, that he was so well satisfied of the Right of the Subject to take an Exception to the Commission of a Judge, if he thought such Commission illegal,—That he durst venture his Lite upon that Point. As to the Validity of the Exceptions then offered, he said, he took that to be a second Point; but was ready to argue them both, if their Honours were pleased to hear him. To which the Chief Justice replied, That he would consider the Exceptions in the Morning, and ordered the Clerk to bring them to him.

Wednesday, the 16th of April, 1735.

The Chief Justice delivered one of the Exceptions to the Clerk. Justice Philipse the other, upon which Mr. Smith arose and asked the Justice their Honours would hear him upon these two Points. * 1st, the Subject has a Right to take such Exceptions, if they judged the Commission segal. 2dly, That the Exceptions tendred were legal and valid. To which the Chief Justice said, That they would neither hear nor allow the Exceptions; for (said he) you thought to have gained a great deal of Applause and Popularity by opposing this Court, as you did the Court of Exchequer; but you have brought it to that Point, That either We must go from the Bench, or you from the Bar: Therefore we exclude you and Mr. Alexander from the Bar; and delivered a Paper to the Clerk, and ordered it to be entered, which the Clerk entered accordingly, and returned the Paper to the Chief Justice; after which the Chief Justice ordered the Clerk to read publickly what he had written; an attested Copy whereof follows.

At a Supream Court of Judicature held for the Province of New-York, at the City Hall of the City of New-York, on Wednesday, the 16th of April, 1735.

PRESENT,

The Honourable James De Lancey, Esq; Chief Justice. The Honourable Frederick Philipse, Esq; Second Justice.

James Alexander, Esq; and William Smith, Attornies of this Court, baving presumed (notwithstanding they were forewarned by the Court of their Displeasure if they should do it) to sign, and baving actually signed, and put into Court, Exceptions in the Name of John Peter Zenger; thereby denying the Legality of the Judges, their Commissions, the in the usual Form; and the Being of this Supream

This first Point is largely treated on in the Arguments of Van Dam's Council, in support of their Plea to the Jurisdiction of the Supream Court, printed here. [New-York] above a Year before that from Page 14 to 35, to which no Answer has as yet appeared; which Argument contains affor some Part of the Arguments necessary to support the 2d Point.

Gourt. It is therefore Ordered, That for the said Contempt, the said James Alexander and William Smith, be excluded from any farther Practice in this Court, and that their Names be struck out of the Roll of Attornies of this Court.

per Cur'. James Lyne, Cl.

After the Order of the Court was read, Mr. Alexander asked, whether it was the Order of Mr. Justice Philipse, as well as of the Chief Justice? To which both answered, that it was their Order: Upon which Mr. Alexander added, That it was proper to ask that Question, That they might know how to have their Relief: He further observed to the Court, upon reading of the Order, That they were mistaken in their wording of it, because the Exceptions were only to their Commissions, and not to the Being of the Court, as is therein alledged; and prayed that the Order might be altered accordingly. The Chief Justice said, they conceived the Exceptions were against the Being of the Court. Both Mr. Alexander and Mr. Smith denied that they were, and prayed the Chief Justice to point to the Place that contained fuch Exceptions; and further added, That the Court might well exist, tho the Commissions of all the Judges were void; which the Chief Justice confessed to be true: And therefore they prayed again that the Order in that Point might be altered; but it was denied.

Then Mr. Alexander desired to know whether they over-ruled or rejected the Exceptions: The Chief Justice said, he did not understand the Difference. To which said Alexander replied, that if he rejected the Exceptions, then they could not appear upon the Proceedings, and in that Case the Defendant was entitled to have them made Part of the Proceedings, by Bill of Exceptions: But if they over ruled them, then by so doing, they only declared them not sufficient to hinder them from proceeding by virtue of those Commissions, and the Exceptions would remain as Records of the Court, and ought to be entered on the Record of the Cause as Part of the Proceedings. The Chief Justice said, they must -he File, to warrant what we have done; as to being Part of the remain u Record of roceedings in that Cause, he said, you may speak to that Point to-morrow.

Friday, April 18th, 1735.

Mr. Alexander lignified to the Court, That on Wednesday last, their Honours lead faid, That the Council for Zenger might speak to the Point, concerning the Rejecting or Over-ruling of Zenger's Exceptions on the Morrow: To which the Chief Justice answered, That he said, You may get some Person to speak to that Point on the Morrow, not meaning that the laid Alexander should speak to it, that being contrary to the Order: Both Mr. Alexander and Mr. Smith faid, they understood it otherwise.

derstood it otherwise.

They both also mentioned, that it was a Doubt, whether by the Words of the Order they were debarred of their Practice as Council, as well as Attornies, whereas they practised in both Capacities? To which the Chief Justice answered, That the Order was plain, That James Alexander, Esq; and William Smith, were debarred and excluded from their mobile Practice at this Bar, and that the Order was intended to bar their acting both as Council and as Attornies, and that it could not be construed otherwise: And it being asked Mr. Philipse, whether he understood the Order so, he answered, that he did understood the Order so, he answered, that he did.

Upon this Exclusion of my Council, I petitioned the Court to order Council for my Defence, who thereon appointed John Chambers Esq; who pleaded Note Guilty for me to the Information. But as to the Point, Whether my Exceptions should be part of the Record, as was moved by my former Council, Mr. Chambers. thought not proper to speak to it: Mr. Chambers also moved, that a certain Day in the next Term, might be appointed for my Trial, and for a Struck Fury: Whereupon my Trial was ordered to be on Monday the 4th of August, and the Court would consider till the first Day of next Term, whether I should have a Struck Jury or not, and ordered that the Sheriff should in the mean Time, at my Charge, return the Freeholders Book.

At a Supream Court of Judicature, held for the Province of New-Pork, before The Honourable James De Lancey, Esq; Chief Justice of the said Province; and The Honourable Frederick Philipse; Esq; second Justice of the said Province.

ON Tuesday the 29th of July, 1735, the Court opened, and on Motion of Mr. Chambers for a Struck Jury, pursuant to the Rule of the preceding Term, the Court were of Opinion, that I was intitled to have a Struck Jury; and that Evening at five of the Clock, some of my Friends attended the Clerk, for striking the Jury; when to their Surprize, the Clerk instead of producing the Freeholders Book, to strike the Jury out of it in their Presence as usual, he produced a List of 48 Persons, who he said he had taken out of the Freeholders Book! My Friends told him, that a great Number of these Persons were not Freeholders, that others were Persons holding Commissions and Offices at the Governour's Pleasure, that others were of the late displaced Magistrates of this City, who must be supposed to have Resentment against me, for what I shad printed concerning them; that others were the Governour's Baker, Taylor, Shoemaker, Candlemaker, Joiner, &c. that as to the sew indifferent Men that were upon that List, they had Reason to believe (as they had heard) that Mr. Attorney had a List of them to strike them out, and therefore requested that he would either bring the Freeholders Book, and chies out of it 48 unexceptionable Men in their Presence, as usual; or else, that he would put impartial Men in the Place of those against whom they could shew just Objections. Notwithstanding this, the Clerk refused to strike the Jury out of the Freeholders Book, and resuled to hear any Objections to the Persons on his List; but told my Friends, If any Objections they had to any Persons, they might strike those Persons out: To which they answered, there would not remain a Jury, if they struck out all the exceptionable Men, and according to the Custom, they had only Right to strike out 125.

But finding no Arguments could prevail with the Clerk to hear their Objections to his Lift, nor to strike the Jury as usual, Mr. Chambers told him, he must apply to the Court, which the next Morning he did, and the Court upon his Motion Ordered, That the 48 should be struck out of the Freeholders Book as usual, in the Presence of the Parties, and that the Clerk should hear Objections to Persons proposed to be of the 43, and allow of such Exceptions as were just. In Pursuance of that Order, a Jury was that Evening struck, to the Satisfaction of both Parties, tho my Friends and Council insisted on no Objections but want of Freehold; and tho they did not insist that Mr. Attorney-General (who was affished by Mr. Blagge,) should shew any particular Cause, against any Persons he disliked, but acquiesced that any Person he disliked should be left out

of the 48.

Before James De Laneey, Esq; Chief Justice of the Province of Nem-Pork, and Frederick Philipse, second Judge, came on my Trial, on the sourth Day of August, 1735, upon an Information for printing and publishing two News Papers, which were called Libels against our Governour and his Administration.

The Defendant John Peter Zenger, being called, appeared, and the Sheriff returned his Venire for the Trial of the faid Caufe.

Mr. Chambers of Council for the Defendant. I humbly move your Honours that we may have Justice done by the Sheriff, and that he may return the Names of the Jurors in the same Order as they were struck.

Chief Justice. How is that? Are they not so returned?

Mr. Chambers. No they are not: For some of the Names that were last see down in the Pannel, are now placed first.

D

Chief

Chief Justice. Make out that, and you shall be righted.

Mr. Chambers. I have the Copy of the Pannel in my Hand as the Jurors were struck, and if the Clerk will produce the Oiginal signed by Mr. Attorney and myself, your Honours will see our Complaint is just.

Chief Justice. Clerk is it so? Look upon that Copy, is it a true Copy of the Pannel as it was struck?

Clerk. Yes, I believe it is.

Chief Justice. How came the Names of the Jurors to be misplaced in the Pannel as it was struck?

nel annexed to the Venire?

Sheriff. I have returned the Jurors in the same Order in which the Clerk gave them to me.

Chief Justice. Let the Names of the Jurors be ranged in the Order they were struck, agreeable to the Copy here in Court.

Which was done accordingly. And the Jury, whose Names were as follows, were called and fworn.

Harmanus Rutgers, Samuel Weaver, Benjamin Hildretb, Abraham Keteltas, John Goelet, Stanly Holmes, Edward Man, Andries Marschalk, Egbert van Borsom, Thomas Hunt, Forman. John Bell, Hercules Wendover.

Mr. Attorney-General, opened the Information, which was as follows.

Mr. Attorney. May it please your Honours, and you Gentlemen of the Jury: The Information now before the Court, and to which the Defendant Zenger has pleaded Not Guilty, is an Information for printing and publishing a false, scanda-lous and seditious Libel, in which his Excellency the Governour of this Province. who is the King's immediate Representative here, is greatly and unjustly scandalized, as a Person that has no Regard to Law nor Justice, with much more, as will appear upon reading the Information. This of Libelling, is what has always been discouraged as a Thing that tends to create Differences among Men, ill Blood among the People, and oftentimes great Bloodshed between the Party Libelling, and the Party Libelled. There can be no Doubt but you Gentlement of the Laws will have the force ill Opinion of Seak Particles. of the Jury, will have the same ill Opinion of such Practices, as the Judges have always shewn upon such Occasions: But I shall say no more at this Time, until you hear the Information, which is as follows.

New-York, Supream Court, of the Term of January, in the Eighth Year of the Reign of our Sovereign Lord King GEORGE the fecond, &c.

New-York, J.BE it remembered, That Richard Bradley Esq; Attorney-General, of our Sovereign Lord the King, for the Province of New-York, who for our said Lord the King, in this Part prosecutes, in his own proper Person, comes here into the Court of our said Lord the King, and for our said Lord the King gives the Court here to understand, and be informed, That John Peter Zenger, late gives the Court here to understand, and be informed, That John Peter Lenger, late of the City of New-York Printer, (being a seditious Person, and a frequent Printer and Publisher of false News, and seditious Libels, and wickedly and maliciously devising the Government of our said Lord the King, of this his Majesty's Province of New-York, under the Administration of his Excellency William Cosby, Esq; Captain General and Governour in Chief; of the said Province, to traduce, scandalize and vilify, and his Excellency the said Governour, and the Ministers and Officers of our said Lord the King, of and for the said Province, to bring into Suspicion and the ill Opinion of the Subjects of our said Lord the King residing within the said Province,) the Twenty eighth Day of January, in the seventh Year of the Reign of our Sovereign Lord George the second, by the Grace of God of of the Reign of our Sovereign Lord George the second, by the Grace of God of Great-Britain, France and Ireland King, Defender of the Faith, &cc. at the City of New-York, did fally, seditiously and scandalously print and publish, and cause to be printed and published, a certain false, malicious, seditious L.bel, intitled,

The New-York Weekly Journal, containing the freshest Advices foreign and domestick; in which Libel, (of and concerning his Excellency the said Governour, and the Ministers and Officers of our said Lord the King, of and for the said Province) among other Things therein contained are these Words; 'Your Appearance in Print at last, gives a Pleasure to many, the' most wish you had come fairly into the open Field, and not appeared behind. Retreachments, these of the supposed at latt, gives a Pleature to many, tho most wish you had come fairly into the open Field, and not appeared behind Retrenchments made of the supposed Laws against Libelling: These Retrenchments, Gentlemen, may soon be shown to you and all Men to be very weak, and to have neither Law nor Reson for their Foundation, so cannot long stand you in stead: Therefore, you had much better as yet leave them, and come to what the People of this City and Province (the City and Province of New-York meaning) think are the Points in Question, (to mit) They (the People of the City and Province of New-York meaning) think as Matters now stand, that their Liberties and Properties are precarious, and that Slavery is like to be intailed on them and their Pos-" are precarious, and that Slavery is like to be intailed on them and their Pof" terity, it some past Things be not amended, and this they collect from many
" past Proceedings." (Meaning many of the past Proceedings of his Excellency the

said Governour, and of the Ministers and Officers of our said Lord the King, of and
for the said Province.) And the said Attorney-General of our said Lord the King,
for our said Lord the King, likewise gives the Court here to understand and he informed, that the said John Peter Zenger afterwards (to wit) the eighth Day of
April, in the seventh Year of our said Lord the King, at the City of New-York
aforesaid, did saidly, seditiously and scaudalously print and publish, and cause to
be printed and published, another salse, malicious, seditious and scandalous Libel,
intitled The New-York Weekly Journal, containing the freshest Advices soreign and Domessick: In which Libel, (of and concerning the Government of
the said Province of New-York, and of and concerning his Excellency the said
Governour, and the Ministers and Officers of our said Lord the King, of and for the
said Province) among other Things therein contained, are these Words, 'One of
our Neighbours (one of the Inhabitants of New-York meaning)
full of Complaints, endeavoured to persuade them to remove into Fersey; to
which it was replied, That would be leaping out of the Frying-pan into the
spany, observing the Strangers (some of the Inhabitants of New-York meaning)
full of Complaints, endeavoured to persuade them to remove into Fersey; to
which it was replied, That would be leaping out of the Frying-pan into the
spany, observing the strangers of the same Governour (bis Excellency the
span she was then moving to Pennsylvania
is to be expected from them; one that was then moving to Pennsylvania
is to be expected from them; one that was then moving to Pennsylvania are precarious, and that Slavery is like to be intailed on them and their Pof-" is to be expected from them; one that was then moving to Pennsylvania (meaning one that was then removing from New-York, with intent to reside at Pen" sylvania,) to which Place it is reported several considerable Men are removing " (from New-York meaning) expressed in Terms very moving, much Concern for the Circumstances of New-York, (the bad Circumstances of the Province and "People of New-York meaning) feemed to think them very much owing to the Influence that some Men (whom he called Tools) had in the Administration (meaning the Administration of the Government of the faid Province of New-York) " faid he was now going from them, and was not to be hurt by any Measures " they should take, but could not help having some Concern for the Welfare of "his Countrymen, and should be glad to hear that the Assembly (meaning the General Assembly of the Province of New-York) would exert themselves as become them, by shewing that they have the luterest of their Country more at "Heart, than the Gratification of any private View of any of their Members, or being at all affected, by the Smiles or Frowns of a Governour, (bis Excel-"or being at all affected, by the Smiles or Frowns of a Governour, (mr Exculency the faid Governour meaning) both which ought equally to be despited, when the Interest of their Country is at Stake. You, says he, complain of the Lawyers, but I think the Law itself is at an End. We (the People of the Frowince of New-York meaning) see Men's Deeds destroyed, Judges arbitarily displaced, new Courts erected without consent of the Legislature (within the Province of New-York meaning) by which it seems to me, Frials by Juries are taken away when a Governour pleases, (bis Excellency the faid Governour meaning) Men of known Estates denied their Votes, contrary to the received. Practice, the best Expositor of any Law: Who is then in that Province (meaning) ing the Province of New-York) that call (can call meaning) any Thing his own, or enjoy any Libery (Liberty meaning) longer than those in the Administration of (meaning the Administration of Government of the said New-York) will condescend to let them do it, for which Reason I lest it. (the Province of New-York meaning) as I believe more will. To the great Disturbance of the Feace of the said Province of New-York, to the great Scandal of our said Lord the King, of his Excellency the said Governour, and of all others concerned in the Administration of the Government of the said Province, and against the Peace of our Sovercign Lord the King, his Crown and Dignity, &c. Whereupon the said Attorney-General of our said Lord the King, for our said Lord the King, prays the Advisement of the Court here in the Premises, and the due Process of the Law, against him the said John Peter Zenger, in this Part to be done, to answer to our said Lord the King of and in the Premises, &c. in the Premises, &c.

Richard Bradley, Attorney-General.

To this Information the Defendant has pleaded Not Guilty, and we are ready to prove it.

Mr. Chambers has not been pleased to favour me with his Notes, so I cannot for fear of doing him Injustice, pretend to set down his Argument; but here Mr. Ghambers fet forth very clearly the Nature of a Libel, the great Allowances that ought to be made for what Men speak or write: That in all Libels there must be some particular Persons so clearly pointed out, that no Doubt must remain about who is meant: That he was in hopes Mr Attorney would fail in his Proof, as to this Point; and therefore defired he would go on to examine his Witnesses.

Then Mr. Hamilton, who at the Request of some of my Friends, was so kind as to come from Philadelphia to affift me on the Trial, spoke.

Mr. Hamilton. May it please your Honours: I am concerned in this Cause on the Part of Mr. Zenger, the Defendant. The Information against my Client was sent me a few Days before I left Home, with some Instructions to let me know how far I might rely upon the Truth of those Parts of the Papers set forth in the Intormation, and which are faid to be libellous: And tho' I am perfectly of the Opinion with the Gentleman who has just now spoke on the same Side with me, as to the common Course of Proceedings, I mean in putting Mr. Attorney upon proving that my Client printed and published those Papers mentioned in the Information; yet I cannot think it proper for me, (without doing Violence to my own Principles) to deny the Publication of a Complaint, which I think is the Right of every free-born Subject to make, when the Matters fo published can be supported with Truth; and therefore I'll save Mr. Attorney the Trouble of examining his Witnesses to that Point; and I do (for my Client) confess, that he both printed and published the two News Papers set forth in the Intermation, and I hope in so doing he has committed no Crime.

Mr. Attorney. Then if your Honours pleases, since Mr. Hamilton has contessed the Fact, I think our Witnesses may be discharged; we have no surther Occasi-

on for them

Mr. Hamilton, If you brought them here only to prove the printing and publishing of these News Papers, we have acknowledged that, and shall abide by it.

Here my Journyman and two Sons (with several others subpæna'd by Mr. Attorney, to give Evidence against me) were discharg'd, and there was Silence in the Court for some Time.

Mr. Chief Justice. Well Mr. Attorney, will you proceed?

Mr. Attorney, Indeed Sir, as Mr. Hamilton has confessed the printing and publishing these Libels, I think the Jury must find a Verdict for the King; for supposing they were true, the Law says that they are not the less libellous for that; nay indeed the Law says, their being true is an Aggravation of the Crime.

Mr. Hamilton. Not so neither Mr. Attorney, there are two Words to that Bargain: I hope it is not our bare printing and publishing a Paper, that will make it a Libel: You will have something more to do, before you make my Client a Libeller; for the Words themselves mutt be libellous, that is, false, scandalous & hole

and feditious, or else we are not guilty.

As Mr. Attorney has not been pleased to favour us with his Argument, which he read, or with the Notes of it, we cannot take upon us to fet down his Words, but only to shew the Book Cases he cited, and the general Scope of his Argument, which he drew from those Authorities. He observed upon the Excellency as well as Use of Government, and the great Regard and Reverence which had been constantly paid to it, both under the Law and the Gospel: That by Government we were protected in our Lives, Religion and Properties; and that for these Reasons, great Care had always been taken to prevent every Thing that might tend to scandalize Magistrates, and others concerned in the Administration of the Government, especially the supreme Magistrate: And that there were many Instances of very severe Judgments, and of Punishments inflicted upon such as had attempted to bring the Government into Contempt; by publishing salse and scurrilous Libels against it, or by speaking evil and scandalous Words of Men in Authority; to the great Disturbance of the publick Peace: And to support this, he cited 5 Coke, 121. (suppose it should be 125) Wood's Instit. 430. 2 Lilly 168. 1 Hawkins 73, 11, 6. From these Books he instited, that a Libel was a malicious Defamation of any Person, expressed either in Printing or Writing, Signs or Pictures, to asperse the Reputation of one that is alive, or the Memory of one that is dead; if he is a private Man, the Libeller deserves a severe Punishment, but if it is against a Magistrate or other publick Person, it is a greater Offence; for this concerns not only the Breach of the Peace, but the Scandal of the Government: For what greater Scandal of Government can there be, than to have corrupt or wicked Magistrates to be appointed by the King, to govern his Subjects under him? And a greater Imputation to the State cannot be, than to suffer such corrupt Men to sit in the sacred Seat of Justice, or to have any Medling in, or concerning the Administration of Justice. And from the same Books Mr. Attorney insisted, that whether the Person desamed is a private Man or a Magistrate, whether living or Dead, whether the Libel is true or false, or if the Party against whom it is made is of good or evil Fame, it is nevertheless a Libel: For in a lettled state of Government, the Party grieved ought to complain for every Injury done him, in the ordinary Course of the Law. And as to its Publication, the Law had taken so great Care of Men's Reputations, that if one maliciously repeats it, or sings it, in the Presence of another, or delivers the Libel or a Copy of it over, to scandalize the Party, he is to be punished as a Publisher of a Libel. He said it was likewise evident, that Libeling was an Offence against the Law of God; Asts xxiii, 5. Then said Paul, I wist not Brethren, that he was the High Priest; for it is written, thou shalt not shall be partly as Partly and the Partly of the speak Evil of the Ruler of the People. 2 Pct. x, 11. Despise Government, presumptuous are they, self-willed, they are not asraid to speak Evil of Dignities, &c. He then insisted that it was clear, both by the Law of God and Man: That it was a very great Offence to speak Evil of, or to revile those in Authority over us; and that Mr. Zenger had offended in a most notorious and gross Manner, in feandalizing his Excellency our Governour, who is the King's immediate Representative, and the supreme Magistrate of this Province: For can there be seen Thing more feedeless said of a Court Philips more feedeless said of the court Philips more feedele any Thing more scandalous said of a Governour than what is published in those Papers? Nay, not only the Governour, but both the Council and Affembly

Mr. Chambers then sum'd up the Jury, observing with great Strength of Reason on Mr. Attorney's Desect of Proof, that the Papers in the Information were False, Malicious or Seditious, which was incumbent on him to prove to the Jury, and without which they could not on their Oaths say, that they were so as charged.

Government is a facred Thing, but I differ very widely from him when he would infinuate, that the just Complaints of a Number of Mcn, who suffer under a bad Administration, is libelling that Administration. Had I believed that to be Law, I should not have given the Court the Trouble of hearing any Thing that I could say in this Cause: I own when I read the Information, I had not the Art to find out (without the Help of Mr. Attorney's Innuendo's) that the Governour was the Person meant in every Period of that News Paper; and I was inclined to believe, that they were wrote by some, who from an extraordinary Zeal for Liberty, had misconstrued the Conduct of some Persons in Authority into Crimes; and that Mr. Attorney out of his too great Zeal for Power, had exhibited this Information, to correct the Indiscretion of my Client; and at the same Time, to shew his Superiors the great Concern he had, lest they should be treated with any undue Freedom: But from what Mr. Attorney has just now said, (to nit) That this Prosecution was directed by the Governour and Council, and from the extraordinary Appearance of People of all Conditions which I observe in Court upon this Occasion, I have Reason to think that those in the Administration have by this Prosecution something more in View, and that the People believe they have a good Deal more at Stake, than I apprehended: And therefore, as it is become my Duty to be both plain and particular in this Cause, I beg Leave to bespeak the Patience of the Court.

I was in hopes, as that terrible Court, where those dreadful Judgments were given, and that Law established, which Mr. Attorney has produced for Authorities to support his Cause, was long ago laid aside, as the most dangerous Court to the Liberties of the People of England that ever was known in that that Mr. Attorney knowing this, would not have attempted to set up

à Star-Chamber here, nor to make their Judgments a Precedent to us: For it is well known, that what would have been judged Treason in those Days for a Man to speak, I think has since not only been practised as lawful, but the contrary

Doctrine has been held to be Law.

In Bremster's Case, for Printing, That the Subjects might defend their Rights and Liberties by Arms, in Case the King should go about to destroy them, he was told by the Chief Justice, that it was a great Mercy, he was not proceeded against for his Life; for that to fay the King could be relifted by Arms in any Cafe what so ever, was express Treason. And yet we see since that Time, Dr. Sacheverell was sentenced in the highest Court in Great-Britain, for saying, That such a Resistance was not lawful: Besides, as Times have made very great Changes in the Laws of England, so in my Opinion there is good Reason that Places should do

fo too.

Is it not surprizing to see a Subject, upon his receiving a Commission from the King to be a Governour of a Colony in America, immediately imagining himself to be invested with all the Prerogatives belonging to the sacred Person of his Prince? And which is yet more aftonishing, to see that a People can be so wild asto allow of and acknowledge those Prerogatives and Exemptions, even to their own Destruction? Is it so hard a Matter to distinguish between the Majesty of our Sovereign, and the Power of a Governour of the Plantations? Is not this making very free with our Prince, to apply that Regard, Obedience and Allegiance to a Subject which is due only to our Sovereign? And yet in all the Cales which Mr. Attorney has cited, to shew the Duty and Obedience we owe to the Supreme Magistrate, it is the King that is there meant and understood, tho' Mr. Attorney is pleased to urge them as Authorities to prove the Heinousness of Mr. Zenger's Offence against the Governour of New-York. The several Plantations and can any one give an Instance, that the Mayor or Head of a Corporation; ever put in a Claim to the sacred Rights of Majesty? Let us not (while we are pretending to pay a great Regard to our Prince and his Peace) make bold to transfer that Allegiance to a Subject, which we owe to our King only. What strange Doctrine is it; to press every Thing for Law here which is so in England? I belive we should not think it a Favour, at present at least, to establish this Prac-

tice. In England so great a Regard and Reverence is had to the Judges, * that if any Man strikes another in West-*.C. 3 Inft. 140.

minster-Hall, while the Judges are sitting, he shall lose his Right-Hand, and forseit his Lands and Goods for so doing. And the Judges here claim all the Powers and Authorities within this Government, that a Court of King's Bench has in England, yet I believe Mr. Attorney will feareely fay, that such a Puinshment could be legally inflicted on a Man for committing fay, that such a Puinshment could be legally intlicted on a Man for committing such an Offence, in the Presence of the Judges sitting in any Cuort within the Province of New-York. The Reason is obvious; a Quarrel or Riot in New-York cannot possibly be attended with those dangerous Consequences that it might in Westminster-Hall; nor, I hope, will it be alledged, that any Misbehaviour to a Governour in the Plantations will, or ought to be, judged of or punished, as a like Undutisulates would be to our Sovereign: From all which, I hope Mr. Attorney will not think it proper to apply his Law-cases to support the Cause of his Governour, which have only been judged, where the King's Sasety or Honour was concerned. It will not be denied but that a Freeholder in the Province of New-York has as good a Right to the sole Use of his Lands, as a Freeholder in England; who has a Right to bring an Action of Trespass against his holder in England, who has a Right to bring an Action of Trespass against his Neighbour, for fuffering his Horse or Cow to come and feed upon his Land, or eat his Corn, whether inclosed or not inclosed; and yet I believe it would be looked upon as a strange Attempt, for one Man here, to bring an Action against another, whose Cattle and Horses ted upon his Grounds not inclosed, or indeed for eating and treading down his Corn, it that were not inclosed. Numberless are the Instances of this Kind that might be given to shew, that what is good

Law at one Time and, in one Place, is not so at another Time, and in another Place; fo that I think, the Law seems to expect, that in these Parts of the World Men should take Care, by a good Fence, to preserve their Property from the Injury of unruly Beasts: And perhaps there may be as good Reason, why Men should take the same Care, to make an honest and upright Conduct a Fence and

Security against the Injury of unruly Tongues.

Mr. Attorney. I don't know what the Gentleman means, by comparing Cases of Freeholders in England with Freeholders here: What has this Case to do with Actions of Trespass, or Men's Fencing their Ground? The Case before the Court is, Whether Mr. Zenger is guilty of Libelling his Excellency the Governor of New-York, and indeed the whole Administration of the Government? Mr. Hamilton has confessed the Printing and Publishing, and I think nothing is plainer than that the Words in the Information are scandalous, and tend to Sedition, and to disquiet the Minds of the People of this Province: And if such Papers are not Libels, I think it may be said there can be no such Tking as a Libel.

Mr. Hamilton. May it please your Honours; I cannot agree with Mr. Attorney: For tho'I freely acknowledge that there are such Things as Libels, yet I must infift at the same Time, that what my Client is charged with, is not a Libel; and I observed just now, that Mr. Attorney in defining a Libel, made use of the Words, scandalous, seditious and tend to disquiet the People; but (whether with Defign or not I will not say) he omitted the Word salfe.

Mr. Attorney. I think I did not omit the Word false: But it has been said

already, that it may be a Libel notwithstanding it may be true.

Mr. Hamilton. In this I must still differ from Mr. Attorney; for I depend upon it, we are to be tried upon this Information now before the Court and Jury, and to which we have pleaded Not Guilty, and by it we are charged with printing and publishing a certain false, malicious, seditious and scandalous Libel. This Word false, must have some Meaning, or else how came it there? I hope Mr. Attorney will not say he put it there by Chance, and I am of Opinion his Information would not be good without it: But to shew that it is the principal Thing which, in my Opinion, makes a Libel, I put the Case, the Information had been for printing and publishing a certain true Libel, would that be the same Thing? Or could Mr. Attorney support such an Information by any Precedent in the English Law? No, the Falshood makes the Scandal, and both make the Libel. And to shew the Court that I am in good Earnest, and to save the Court's Time, and Mr. Attorney's Trouble, I will agree, that if he can prove the Facts charged upon us to be false, I'll own them to be scandalous seditious, and a Libel. So the Work seems now to be pretty much shortned, and Mr. Attorney has now only to prove the Words false, in order to make us Guilty.

Mr. Attorney. We have nothing to prove; you have confessed the Printing and Publishing; but if it was necessary (as I insist it is not) how can we prove a Negative? But I hope some Regard will be had to the Authorities that have been produced, and that supposing all the Words to be true, yet that will not help them, that Chief Justice Holt in his Charge to the Jury, in the Case of Tutchin, made no Distinction, whether Tutchin's Papers were true or false; and -as Chief Justice Holt has made no Distinction in that Case, so none ought to be emade here; nor can it be shewn in all that Case, there was any Question made

about their being false or true.

Mr. Hamilton. I did expect to hear, That a Negative cannot be proved; but every Body knows there are many Exceptions to that general Rule: For if a Man is charged with killing another, or stealing his Neighbour's Horse, if he is Innocent in the one Case, he may prove the Man said to be killed, to be really alive; and the Horse said to be stolen, never to have been out of his Master's Stable, &c. And this, I think is proving a Negative: But we will fave Mr. Attorney the Trouble of proving a Negative, and take the Onus probandi upon ourfelves, and prove those very Papers that are called Libels to be true.

Mr. Chief Justice. You cannot be admitted Mr. Hamilton, to give the Truth

of a Libel in Evidence. A Libel is not to be justified; for it is nevertheless a Libel that it is true. Mr.

Mr. Hamilton. I am forry the Court has so soon resolved upon that Piece of Law; I expected first to have been heard to that Point: I have not in all my Reading met with an Authority that fays we cannot be admitted to give the Truth in Evidence, upon an Information for a Libel.

Mr. Chief Justice. The Law is clear, that you cannot justify a Libel.

Mr. Hamilton. I own that, may it please your Honour, to be so; but with Submission, I understand the Word justify, there to be a Justification by Plea, as it is in the Case upon an Indistment for Murder, or an Assault and Battery; there the Prisoner cannot justify, but plead Not Guilty: Yet it will not be denied but he may, and always is, admitted to give the Truth of the Fact, or any other Matter in Evidence, which goes to his Acquital; as in Murder, he may prove it was in Defence of his Life, his House, &c. and in Assault and Battery, he may give in Evidence, that the other Party struck first, and in both Cases he will be acquitted: And in this Sense I understand the Word justify, when applied to the

Case before the Court.

Mr. Chief Justice. I pray shew that you can give the Truth of a Libel in Evi-

dence.

Mr. Hamilton. I am ready, both from what I understand to be the Authoriries in the Case, and from the Reason of the Thing, to shew that we may lawfully do so: But here I beg leave to observe, that Informations for Libels is a Child, if not born, yet nursed up, and brought to sull Maturity, in the Court of Star Chamber.

Mr. Chief Justice. Mr. Hamilton you'll find yourself mistaken; for in Coke's Institutes you'll find Informations for Libels, long before the Court of Star Cham-

ipeak to by and by: But as you have mentioned it, I'll read that Authority now:

Mr. Hamilton. I thank your Honour; that is an Authority I did propose to

I think it is in 3 Co. Inst. under Title Libel: It is the Case of John de Northampton for a Letter wrote to Robert de Ferrers, one of the King's privy Council, * concerning Sir William Scot, Chief Justice, * 3 Coke, 3 Inft. 174. and his Fellows; but it does not appear to have been upon Information; and I have good Grounds to fay it was upon Indicament, as was the Case of Adam de Revensworth, just mentioned before by Lord Coke under the fame l'itle; and I think there cannot be a greater, at least a plainer Authority for us, than the Judgment in the Case of John de Northamption, which my Lord has set down at large. Et quia pradictus Johannes cognovit dictam Litteram per se scriptam Roberto de Ferrers, qui est de Concilio Regis, qua littera continet in se nullam veritatem, &c. Now Sir, by this Judgment it appears the libellous Words were utterly false, and there the Falshood was the Crime, and is the Ground of that Judgment: And is not that what we contend for? Do not we insist that the Falshood makes the Scandal, and both make the Libel? And how shall it be known whether the Words are libellous, that is, true or false, but by admitting us to prove them true, fince Mr. Attorney will not undertake to prove them false? Besides, is it not against common Sense, that a Man should be punished in the same Degree for a true Libel (if any such Thing could be) as for a false One? I know it is said, That Truth makes a Libel the more provoking, and therefore the Offence is the greater, and consequently the Judgment should be the heavier. Well, suppose it were so, and let us agree for once. That Truth is a greater Sin than False. pose it were so, and let us agree for once, That Truth is a greater Sin than Fals-bood: Yet as the Offences are not equal, and as the Punishment is arbitrary, that is, according as the Judges in their Discretion shall direct to be inslicted; is it not absolutely necessary that they should know, whether the Libel is true or false, that they may by that Means be able to Proportion the Punishment? For, would it not be a sad Case, if the Judges, for want of due Information, should chance to give as severe a Judgment against a Man for writing and publishing a Lie, as for writing and publishing a Truth? And yet this (with Submission) as montrous and ridiculous as it may seem to be, is the natural Consequence of Mr. Attorney's Doctrine, That Truth makes a worse Libel than Falshood, and must fol-

low from his not proving our Papers to be false, or not suffering us to prove them to be true. But this is only reasoning upon the Case, and I will now proceed to shew, what in my Opinion will be sufficient to induce the Court, to allow us to prove the Truth of the Words, which in the Information are called libellous: And first, I think there cannot be a greater Authority for us, than the Judgment I just now mentioned, in the Case of John de Northampton, and that was in early Times, and before the Star Chamber came to its Fulnels of Power and Wickedness. In that Judgment, as I observed, the Falshood of the Letter which was wrote, is affigued as the very Ground of the Sentence: And agreeable to this it was urged by Sir Robert Sawyer, * in the Trial of the seven Bishops, That the falsity, the Malice, and Sedition of the Writ- *State Trials, Vol. 4.

ing, were all Facts to be proved: But here, it may be said, Sir

Robert was one of the Bishop's Council, and his Argument is not to be allowed for Law: But I offer it only to shew that we are not the first who have insisted, that to make a Writing a Libel, it must be false: And if the Argument of a Council must have no Weight, I hope there will be more Regard shewn to the Opinion of a Judge, and therefore I mention the Words of Justice Powel in the same Trial; where he says (of the Petition of the Bishops, which was called a Libel, and upon which they were prosecuted by Information) That to make it a Libel, it must be false and malicious, and tend to Scatton; and declared, as he saw no Falsbood or Malice in it, he was of Opinion, that it was no Libel: Now I should think this Opinion alone, in the Case of the King, and in a Case which that King had fo much at Heart, and which to this Day has never been contradicted, might be a sufficient Authority, to entitle us to the Liberty of proving the Truth of the Papers, which in the Information are called false, malicious, seditious and scandalous: If it be objected, that the Opinions of the other three Judges were against him, I answer, That the Censures the Judgments of these Men have undergone; and the Approbation Justice Powel's Opinion, his Judgment and Conduct upon that Trial has met with, and the Honour he gained to himself, for daring to speak Truth at such a Time, upon such an Occasion, and in the Reign of such a King, is more than sufficient, in my humble Opinion, to warrant our infifting on his Judgment, as a full Authority to our Purpose, and it will lie upon Mr. Attorney to shew, that this Opinion has since that Time been denied to be Law, or that Justice Powel who delivered it, has ever been condemned or blamed for it, in any Law-Book extant at this Day, and this, I will venture to fay, Mr. Attorney cannot do: But to make this Point yet more clear, if any Thing can be clearer, I will on our Part proceed and shew, that in the Case of Sir Samuel Barnardiston, his Council, notwithstanding he stood before one of the greatest Mon-sters that ever presided in an English Court (Judge Fessiers) insisted on the Want of Proof, to the Malice and seditious Intent of the Author, of what was called a Libel: And in the Case of Tutchin, which seems to be Mr. Attorney's chief Authority, that Case is against him; for he was upon his

Trial put upon shewing the Truth of his Papers, but did State Trials, Vol. V. P. 549. not, at least the Prisoner was asked by the King's Council, whether he would say they were true? And as he never pretended that

they were true, the Chief Justice was not to say so. But the Point will still be clearer on our Side from Fuller's Case, For fally and wickedly causing to be printed, à false and scandalous Libel, State Trials, vol. V. P. 445. in which (among st other Things) were contained these Words,

Mr. Jones has also made Oath, That he paid £.5000 more by the late King's Order, to several Persons in Places of Trust, that they might complete my Rain, and invalidate me for ever: Nor is this all, for the same Mr. Jones will prove by unde-niable Witnesses and Demonstration, that he has distributed more than £.180,000 in Eight Years last past, by the French King's Order, to Persons in publick Trust in this Kingdom. Here you see is a scandalous and infamous Charge against the late King; here is a Charge no less than High Treason, against the Men in publick Trust, for receiving Money of the French King, then in actual War with

Crown of Great-Britain; and yet the Court were far from bearing him down with that Star Chamber Doctrine, to wit, That it was no matter whether what he faid was true or false; no, on the contrary, Lord Chief Justice Holt asks Fuller, Can you make it appear they are true?——Have you any Witnesse?——You might have had Subpecna's for your Witnesses against this Day:——If you take upon you to write such Things as you are charged with, it lies upon you to prove them true, at your Peril:———If you have any Witnesses, I will hear them:————How came you to write those Books which are not true?———If you have any Witnesses, produce them:————If you can offer any Matter to prove what you have wrote, let us hear it. Thus said, and thus did that great Man, Lord Chief Justice Holt, upon a Trial of the like Kind with ours, and the Rule laid down by him in this Case is, That he who will take upon him to write Things, it lies upon him to prove them at his Peril. Now Sir, take upon him to write Things, it lies upon him to prove them at his Peril. Now Sir, we have acknowledged the Printing and Publishing of those Papers, set forth in the Information, and (with the Leave of the Court) agreeable to the Rule laid. down by Chief Justice Holt, we are ready to prove them to be true, at our Peril.

Mr. Chief Justice. Let me see the Book.

Here the Court had the Case under Consideration a considerable Time, and every one was filent.

Mr. Chief Justice. Mr. Attorney, you have heard what Mr. Hamilton has said, and the Cases he has cited, for having his Witnesses examined, to prove the Truth of the several Facts contained in the Papers set forth in the Information,

what do you say to it?
Mr. Actorney. The Law in my Opinion is very clear; they cannot be admited to justify a Libel; for, by the Authorities I have already read to the Court, it is not the less a Libel because it is true. I think I need not trouble the Court with reading the Cases over again; the Thing seems to be very plain, and I sub-

mit it to the Court.

Mr. Chief Justice. Mr. Hamilton, the Court is of Opinion, you ought not to be permitted to prove the Facts in the Papers: These are the Words of the Book, It is far from being a Justification of a Libel, that the Contents thereof are true, or that the Person upon whom it is made, had a had Reputation, since the greater Appearance there is of Truth in any malicious Investive, so much the more provoking it is.

Mr. Hamilton. These are Star Chamber Cases, and I was in Hopes, that Practice had been dead with the Court.

Mr. Chief Justice. Mr. Hamilton, the Court have delivered their Opinion, and we expect you will use us with good Manners; you are not to be permitted to

argue against the Opinion of the Court.

Mr. Hamilton. With Submission, I have seen the Practice in very great Courts, and never heard it deemed unmannerly to-

Mr. Chief Justice. After the Court have declared their Opinion, it is not good Manners to insist upon a Point, in which you are over-ruled.

Mr. Hamilton. I will say no more at this Time; the Court I see is against us in this Point; and that I hope I may be allowed to say.

Mr. Chief Justice. Use the Court with good Manners, and you shall be allowed all the Liberty you can reasonably define

ed all the Liberty you can reasonably desire.

Mr. Hamilton, I thank Your Honour. Then Gentlemen of the Jury, it is to you we must now appeal, for Witnesses, to the Truth of the Facts we have offered, and are denied the Liberty to prove; and let it not seem strange, that I apply myself to you in this Manner, I am warranted so to do both by Law and Reason: The Law supposes you to be summoned, out of the Neighbourhood where the Fact is alledged to be committed; and the Reason of your being taken out of the Neighbourhood is because you are supposed to have the best snowout of the Neighbourhood is, because you are supposed to have the best Knowledge of the Fact that is to be tried: And were you to find a Verdict against my Client, you must take upon you to say, the Papers referred to in the Information, and which we acknowledge we printed and published, are false, seandalous

and feditious: But of this I car. have no apprehension: You are Citizens of New-Fork; you are really what the Law supposes you to be, bonest and lawful Men; and, according to my Brief, the Facts which we offer to prove, were not committed in a Corner; they are notoriously known to be true; and therefore in your Justice lies our Sasety: And as we are denied the Liberty of giving Evidence to prove the Truth of what we have published, I will beg Leave to lay it down as a standing Rule in such Cases, That the suppressing of Evidence ought always to be taken for the strongest Evidence; and I hope it will have that Weight with you: But since we are not admitted to examine our Witnesses, I will endeavour to shorten the Dispute with Mr. Attorney, and to that End, I desire he would favour us with some Standard Definition of a Libel, by which it may be

certainly known, whether a Writing be a Libel, yea or not.

Mr. Attorney. The Books, Ithink, have given a very full Definition of a Libel; they say, it is in a strict Sense taken for a malicious Defamation, expressed either in Printing or Writing, and tending either to blacken the Memory of one who is dead, or the Reputation of one who lixiii. §. 1.

is alive, and to expose him to public Hatred, Contempt or Ridicule.

§ But it is said, That in a larger Sense, the Notion of a Libel may be applied to any Defamation what soever, expressed either by Signs or Pictures: As by fixing up a Gallows against a Man's Door, or by painting bim in a shameful and ignominious Manner. § 3. And fince the chief Cause for which the Law so severely punishes all Offences of this Nature, is the direct Tendency of them to a Breach of public Peace, by provoking the Parties injured, their Friends and Families to Acts of Revenge, which it would be impossible to restrain by the severest Laws, were there no Redress from public Justice for Injuries of this kind, which of all others are the most sensibly felt; and since the plain Meaning of such Scandal as is expressed by Signs or Pictures, is as obvious to common Sense, and as easily understood by every common Capacity, and altogether as provoking as that which is expressed by Writing or Printing; why should it not be equally criminal? § 4. And from the same Ground it seems also clearly to follow, That fuch Scandal as is expressed in a scoffing and ironical Manner, makes a Writing as properly a Libel, as that which is expressed in direct Terms; as where a Writing in a will not play the Jew nor the Hypocrite, and so goes on in a Strain of Ridicule, to infinuate that what he did was owing to his Vain-glory; or where a Writing, pretending to recommend to one the Characters of several great Men for his Imitation, instead of taking Notice of what they are generally esteemed famous for, pitched on such Qualities only which their Enemies charge them with the Want of, as by proposing such a one to be imitated for his Courage, who is known to be a great Statefman, but no Soldier, and another to be imitated for his Learning, who is known to be a great General, but no Scholar, &c. which Kind of Writing is as well understood to mean only to upbraid the Parties with the Want of these Qualities, as if it had directly and expresty

Mr. Hamilton. Ay, Mr. Attorney; but what certain Standard Rule have the Books laid down, by which we can certainly know, whether the Words or the Signs are malicious? Whether they are defamatory? Whether they tend to the Breach of the Peace, and are a sufficient Ground to provoke a Man, his Family, or Friends to Acts of Revenge, especially those of the ironical fort of Words? And what Rule have you to know when I write ironically? I think it would be hard, when I say, such a Man is a very morthy honest Gentleman, and of fine Under-

standing, that therefore I meant he was a Knave or a Fool.

Mr. Attorney. I think the Books are very full; it is said in 1 Hawk. p. 193. just now read, That such Scandal as is expressed in a scotsing and ironical Manner, makes a Writing as properly a Libel, as that which is expressed in direct Terms; as where a Writing, in a taunting Manner reckoning up several Acts of Charity done by one, says, you will not play the Jew or the Hypocrite, and so goes on to infinuate, that what he did was owing to his Vain-glory, &c. Which Kind of ing is as well understood to mean only to upbraid the Parties with the Want of these Qualities,

Qualities, as if it had directly and expresty done so: I think nothing can be plainer

or more full than these VVords.

Mr. Hamilton. I agree the Words are very plain, and I shall not scruple to allow (when we are agreed that the Words are false and scandalous, and were spoken in an ironical and scoffing Manner, &c.) that they are really libellous; but here still occurs the Uncertainty, which makes the Difficulty to know, what Words are scandalous, and what not; for you say, they may be scandalous, true or false; befides, how shall we know whether the Words were spoke in a scoffing and ironical Manner, or seriously? Or how can you know, whether the Man did not think as he wrote? For by your Rule, if he did, it is no Irony, and consequently no Libel: But under Favour, Mr. Attorney, I think the same Book, and the same Section will shew us the only Rule by which all these Things are to be known: The VVords are these; which Kind of Writing is as well understood to mean only to upbraid the Parties with the Want of these Qualities, as if they had directly and expressly done so: Here it is plain, the VVords are scandalous, scoffing and ironical, only as they are understood. I know no Rule laid down in the Books but this I mean as the WVords are strategies. this, I mean, as the VVords are understood.

Mr. Chief Justice. Mr. Hamilton, do you think it so hard to know when VVords are ironical, or spoke in a scoffing Manner?

Mr. Hamilton. I own it may be known; but I insist, the only Rule to know is, as I do or can understand them; I have no other Rule to go by, but as I un-

derstand them.

Mr. Chief Justice. That is certain: All VV ords are libellous or not, as they are understood: Those who are to judge of VV ords, must judge whether they are scandalous or ironical, tend to the Breach of the Peace, or are seditious: There

can be no Doubt of it.

Mr. Hamilton. I thank your Honour; I am glad to find the Court of this Opinion: Then it follows that those twelve Men must understand the VVords in the Information to be Jeandalous, that is to say false; for I think it is not pretended they are of the ironical Sort; and when they understand the VVords to be to, they will say we are guilty of Publishing a false Libel, and not otherwise.

Mr. Chief Justice. No, Mr. Hamilton, the Jury may find that Zenger printed and published these Papers, and leave it to the Court to judge whether they are

libellous; you know this is very common; it is in the nature of a special Verdict,

where the Jury leave the Matter of Law to the Court.

Mr. Hamilton. I know, may it please your Honour, the Jury may do so; but I do likewise know, they may do otherwise: I know they have the Right beyond all Dispute, to determine both the Law and the Fact, and where they do not doubt of the Law, they ought to do so: This of leaving it to the Judgment of the Court, whether the Words are libellous or not, in Effect renders Juries useless (to say no worse) in many Cases; but this I shall have Occasion to speak to by and by; and I will with the Court's Leave proceed to examine the Inconveniencies that must inevitably arise from the Doctrines Mr. Attorney has laid down: And I observe, in support of this Prosecution, he has frequently repeated the VVords taken from the Case of Libel factors, in 5 Co. This is indeed the leading Case, and to which almost all the other Cases upon the Subject of Libels do refer; and I must insist upon saying, That according as this Case seems to be understood by the and Mr. Attorney, it is not Law at this Day: For the I own it to be base and unworthy to scandalize any Man, yet I think it is even villamous to scandalize a Person of public Character, and I will go so far into Mr. Attorney's Doctrine as to agree, that if the Faults, Mistakes, nay even the Vices of such a Person be private and personal, and don't affect the Peace of the Public, or the Liberty or Property of our Neighbour, it is unmanly and unmannerly to expose them either by VVord or VVriting: But when the Ruler of a People brings his personal Failings, but much more his Vices, into his Administration, and the People sind themselves affected by them, either in their Liberties or Properties, that will alter the Case mightily, and all the high Things that are said in Favour of Rulers, and of Dignities, and upon the fide of Power, will not be able to stop People's Mouths when they feel themselves oppressed, I mean in a free Government: It is true, in Times past, it was a Crime to speak Truth, and in that terrible Court of Star Chamber, many worthy and brave Men suffered for so doing; and yet even in that Court, and in those bad Times, a great and good Man durst say, what I hope will not be taken amiss of me to say in this Place, to wit, The Practice of Informations for Libels, is a Sword in the Hands of a wicked King, and an arrand Coward, to cut down and destroy the Innocent; the one cannot, because of bis high Station, and the other dares not, because of bis Want of Courage, revenge himself in another Manner.

Mr. Attorney. Pray Mr. Hamilton, have a Care what you fay, don't go too far neither: I don't like those Liberties.

Mr. Hamilton. Sure Mr. Attorney, you won't make any Applications; all Men agree that we are governed by the best of Kings, and I cannot see the Meaning of Mr. Attorney's Caution; my well known Principles, and the Sense I have of the Blessings we enjoy under his present Majesty, makes it impossible for me to err, and I hope, even to be suspected, in that Point of Duty to my King. May it please your Honour, I was saying, That notwithstanding all the Duty and Reverence claimed by Mr. Attorney to Men in Authority, they are not exempt from observing the Rules of common Justice, either in their private or public Capacities; the Laws of our Mother-country know no Exemption: It is true, Men in Power are harder to be come at for Wrongs they do, either to a private Person, or to the Public; especially a Governour in the Plantations, where they insist upon an Exemption from answering Complaints of any Kind in their own Government: We are indeed told, and it is true, they are obliged to answer a Suit in the King's Courts at *VVestminster*, for a Wrong done to any Person here. But do we not know how impracticable this is to most Men among us, to leave their Families (who depend on their Labour and Care for their Livelihood) and carry Evidences to Brittain, and at a great, nay, a far greater Expence than almost any of us are able to bear, only to prosecute a Governour for an Injury donc here: But when the Oppression is general, there is no Remedy even that Way, no, our Constitution has (blessed be God) given us an Opportunity, if not to have fuch Wrongs redreffed, yet by our Prudence and Resolution we may in a great Measure prevent the committing of such Wrongs, by making a Governour fensible that it is his Interest to be just to those under his Care; for such is the Sense that Men in general (I mean Freemen) have of common Justice, that when they come to know that a chief Magistrate abuses the Power with which he is trusted for the good of the People, and is attempting to turn that very Power against the Innocent, whether of high or low Degree, I say, Mankind in general, seldom sail to interpose, and as far as they can, prevent the Destruction of their Fellow-Subjects: And has it not often been seen (and I hope it will always be seen) that when the Representatives of a free People are by just Representations or Remonstrances, made sensible of the Sufferings of their Fellow-Subjects, by the Abuse of Power in the Hands of a Governour, they have declared (and loudly too) that they were not obliged by any Law to support a Governour who goes about to destroy a Province, or Colony, or their Priviledges, which by his Majesty he was appointed, and by the Law he is bound to protect and encourage: But I pray it may be confidered of what Use is this mighty Priviledge, if every Man that fuffers must be filent? And if a Man must be taken up as a Libeller, for telling his sufferings to his Neighbour? I know it may be answered, Have you not a Legislature? Have you not a House of Representatives to whom you may complain? And to this I answer, we have: But what then? Is an Assembly to be troubled with every Injury done by a Governour? Or are they to hear of nothing but what those in the Administration will please to tell them? Or what Sort of a Trial must a Man have? And how is he to be remedied; especially if the Case were, as I have known it to happen in America in my Time; That a Governour who has Places (1 will not say Pensions, for I believe

they feldom give that to another, which they can take to themselves) to bestow, and can or will keep the fame Assembly (after he has modelled them so as to get a Majority of the House in his Interest) for near twice seven Years together? I pray what Redress is to be expected for an honest Man, who makes his Complaint against a Governour to an Assembly, who may properly enough be said to be made by the same Governour, against whom the Complaint is made? The Thing answers itself: No, it is natural, it is a Priviledge, I will go farther, it is a Right which all Freemen claim, and are entitled to complaint when they are hurt; they have a Right publickly to remonstrate the Abuses of Power, in the strongest Terms, to put their Neighbours upon their Guard, against the Crast or open Violence of Men in Authority, and to affert with Courage the Sense they have of the Blessings of Liberty, the Value they put upon it, and their Resolution at all Hazards to preserve it, as one of the greatest Bleslings Heaven can be-stow: And when a House of Assembly composed of honest Freemen sees the general Bent of the People's Inclinations, that is it which must and will (I'm sure it bught to)weigh with a Legislature, in spite of all the Crast, Carressing and Cajoiling, made use of by a Governour, to divert them from hearkning to the Voice of their Country: As we all very well understand the true Reason, why Gentlemen take so much Pains and make such great Interest to be appointed Governours, so is the Design of their Appointment not less manifest: We know his Majesty's gracious Intentions to his Subjects; he desires no more than that his People in the Plantations should be kept up to their Duty and Allegiance to the Crown of Great-Britain, that Peace may be preserved amongst them, and Justice impartially administred; that we may be governed to as to render us useful to our Mother-country, by encouraging us to make and raise such Commodities as may be useful to Great-Britain: But will any one say, that all or any of these good Ends are to be essected, by a Governour's setting his People together by the Ears, and by the Affiftance of one Part of the People; to plague and plunder the other? The Commission which Governous bear, while they exeoute the Powers given them, according to the Intent of the Royal Grantor, expressed in their Commissions, requires and deserves very great Reverence and Submission; but when a Governour departs from the Duty enjoined him by his Sovereign, and acts as if he was less accountable than the Royal Hand that gave thim all that Power and Honour which he is possessed of; this sets People upon examining and enquiring into the Power, Anthority and Duty of fuch a Magi-Aftrace, and to compare those with his Conduct, and just as far as they find he exceeds the Bounds of his Authority, or falls short in doing impartial Justice to the People under his Administration, so far they very often, in return, come short in their Duty to such a Governour: For Power alone will not make a Man beloved, and I have heard it observed, That the Man who was neither good nor wife, before his being made a Governour, never mended upon his Preferment, but has been generally observed to be worse: For Men who are not endued with Wisdom and Virtue, can only be kept in Bounds by the Law; and by how much the further they think themselves out of the Reach of the Law, by to much the more wicked and cruel Men are: I wish there were no Instances of the Kind at this Day: And wherever this happens to be the Case of a Governour, unhappy are the People under his Administration, and in the End he will find himself so too; for the People will neither love him, nor support him: I make no Doubt but there are those here, who are zealously concerned for the Success of this Prosecution, and ver I hope they are not many, and even some of those, I am persuaded (when they consider what Lengths such Prosecutions may be carried, and how deeply the Liberties of the People may be affected by such Means) will not all abide by their present Sentiments; I say, Not all: For the Man who from an Intimacy and Acquaintance with a Governour has conceived a personal Regard for him; the Man who has felt none of the Strokes of his Power; the Man who believes that a Governour has a Regard for him and confides in him, it is natural for such Men to wish well to the Affairs of such a Governour &

Governour; and as they may be Men of Honour and Generolity, may, and no doubt will, wish him Success, so far as the Rights and Priviledges of their Fellow Citizens are not affected: But as Men of Honour, I can apprehend nothing from them; they will never exceed that Point: There are others that are under stronger Obligations, and those are such as are in some Sort engaged in Support of a Governour's Cause, by their own or their Relations Dependance on his Favour, for some Post or Preferment; such Men have what is commonly called Duty and Gratitude to influence their Inclinations, and oblige them to go his Lengths: I know Men's Interests are very near to them, and they will do much, rather than forego the Favour of a Governour, and a Livelihood at the fame Time; but I can with very just Grounds hope, even from those Men, whom I will suppose to be Men of Honour and Conscience too, that when they see the Liberty of their Country is in Danger, either by their Concurrence, or even by their Silence, they will, like Englishmen, and like themselves, freely make a Sacrifice of any Preforment or Englishmen, they have constituted as the constitute of the constitution of the constitute of the const a Sacrifice of any Preferment or Favour rather than be accessary to destroying the Liberties of their Country, and entailing Slavery upon their Posterity: There are, indeed, another set of Men, of whom I have no Hopes; I mean such, who lay aside all other Considerations, and are ready to join with Power in any Shapes, and with any Man, or Sort of Men, by whose Means or Interest they may be affifted to gratify their Malice and Envy against those whom they have been pleased to hate; and that for no other Reason, but because they are Men of Abilities and Integrity, or at least are possessed of some valuable Qualities far superior to their own: But as Envy is the Sin of the Devil, and therefore very hard, if at all, to be repented of, I will believe there are but sew of this detestable and worthless Sort of Men; nor will their Opinions or Inclinations have any Influence upon this Trial. But to proceed; I beg Leave to infift, That the Right of complaining or remonstrating is natural; and the Restraint upon this matural Right is the Law only, and that those Restraints can only extend to what is false: For as it is Truth alone which can excuse or justify any Man for complaining of a bad Administration, I as frankly agree, that nothing ought to excuse a Man who raises a falle Charge or Accusation, even against a private Person, and that no manner of Allowance ought to be made to him, who does so against a publick Magistrate, Truth ought to govern the whole Affair of Libels, and yet the Party accused runs Risque enough even then; for if he fails of proving every Tittle of what he has wrote, and to the Satisfaction of the Court and Jury too, he may find to his Cost, that when the Prosecution is set on Foot by Men in Power, it seldom wants Friends to Favour it: And from thence (it is said) has arisen the great Diversity of Opinions among Judges, about what Words were or were not scandalous or libellous: I belive it will be granted, that there is not greater Uncertainty in any Part of the Law, than about Words of Scandal; it would be mispending of the Court's Time to mention the Cases; they may be faid to be numberless; and therefore the utmost Care ought to be taken in following Precedents; and the Times when the Judgments were given, which are quoted for Authorities in the Case of Libels, are much to be regarded: I think it will be agreed, That ever fince the Time of the Star Chamber, where the most arbitrary and destructive Judgments and Opinions were given, that ever an Englishman heard of, at least in his own Country: I say, Prosecutions for Libels since the Time of that arbitrary Court, and until the glorious Revolution, have generally been set on Foot at the Instance of the Cown or its Ministers; and it is no small Reproach to the Law, that these Prosecutions were too often and too much countenanced by the Judges, who held their Places at Pleasure, (a disagreeable Tenure to any Officer, but a dangerous one in the Case of a Judge.) To say more to this Point may not be proper: And yet I cannot think it unwarrantable to shew the unhappy Influence that a Sovereign has some Times had, not only upon Judges, but even upon Parliaments themselves.

It has already been shewn, how the Judges differed in their Opinions about the Nature of a Libel, in the Case of the seven Bishops: There you see three Judges

Judges of one Opinion, that is, of a wrong Opinion, in the Judgment of the best Men in England, and one Judge of a right Opinion. How unhappy might it have been for all o us at this Day, if that Jury had understood the Words in that Information as the Court did? Or it they had left it to the Court, to judge whe ther the Perition of the Bishops was, or was not a Libel? No, they took upon them, to their immortal Honour! to determine both Law and Fact, and to understand the Petition of the Bishops to be no Libel; that is, to contain no Falsicod nor Selition, and therefore found them Not Guilty. And remarkable is the Case of Sir Samuel Barnardiston, who was fined £.10,000 for writing a Letter, in which, it may be said, none saw any Scandal or Faishood but the Court and Jury; for that Judgment was afterwards looked upon as a cruel and detestable Judgment, and therefore was reverfed by Parliament: Many more Instances might be given of the Complaifance of Court-Judges, about those Times and before; but I will mention only one Case more, and that is the Case of Sir Edward Hales, who tho' a Roman Catholic, was by King James II. preferred to be a Colonel of his Army, notwithstanding the Statute of 25 Cha. 2d. Chap. 2. by which it is provided, That every one that accepts of an Office, Civil or Military, &c. I all take the Oaths, subscribe the Declaration, and take the Savrament; within three Months, &c. otherwise he is disabled to hold such Office, and the Grant for the same to be null and void, and the Party to forfeit £.500. Sie Edward Hales did not take the Catas or Sacrament, and was profecuted for the £.500 for exercifing the Office of a Colonel by the Space of three Months, without conforming as in the Act is directed: Sir Edward pleads, That the King by his Letter's Patent did distense with his taking the Oath's and Sucraments, and subscribing the Declaration, and had pardoned the Forfeiture of £.500. And whether the King's Dispensation was good, against the Said Act. Parliament, was the Question: I shall mention no more of this Cale, than to thew how in the Reign of an arbitrary Prince, where Judges hold their Seats at Pleasure, their Determinations have not always been such as to make Precedents of, but the Contrary; and so it happened in this Case, where it was solemaly judged, That notwithstanding this At of Parliament, made in the strongest Terms, for Preservation of the Protestant Religion, That yet the King had, by his Royal Prerogative, a Power to dispense with that Law; and Sir Edward Hales was acquitted by the Judges accordingly: So the King's Dispensing Power, being by the Judges set up above the Act of Parliament, this Law, which the People tooked upon as their chief Security against Popery and arbitrary Power, was by this Judgment rendered altogether ineffectual: But this Judgment is sufficiently exposed by Sir Edward Atkins, late one of the Judges of the Court of Common Pleas, in his Enquiry into the King's Power Enquiry into the

Enquiry into the Power of Dispensing of dispensing with panal Statutes; where it is shewn, Who it was that first invented Dispensations; bow they came into England; with ponal Statutes.

owing to the Countenance given them by the Judges: He says of the Dispensing Power * The Pope was the Inventor of it; our Kings have borrowed it from them; and the Judges have from Time to Time nursed and * Posseript to the dees of the and given it Countenance; and it is different the Enguiry, Page St.

Enquiry, Page 516 dressed it up, and given it Countenance; and it is still upon the

Growth, and encroaching 'till it has almost subverted all Law, and made the Regal Power avsolute if not dissolute: This seems not only to shew how far Judges have been influenced by Power, and how little Cases of this Sort, where the Prélogative has been in Question in former Reigns, a e to be relied upon for Law: But I think it plainly shews too, that a Man may use a greater Freedom with the Power of his Sovereign and the Judges in Great-Britain, than it seems he may with the Power of a Governour in the Plantations, who is but a Fellow Subject: Are these Words with which we are charged like these? Do Mr. Zenger's Papers contain any fuch Freedoms with his Governour or his Council, as Sir Edward Atkins has taken, with the Regal Power and the Judges in English gland? And yet I never heard of any Information brought against him for these Freedoms;

If then upon the whole, there is so great an Uncertainty among Judges (learned and great Men) in Matters of this Kind; If Power has had so great an Influence on Judges; how cautious ought we to be in determining by their Judgments, especially in the Plantations, and in the Case of Libels? There is Heresy in Law as well as in Religion, and both have changed very much; and we well know that it is not two Centuries ago that a Man would have been burnt as an Heretick, for owning such Opinions in Matters of Religion, as are publickly wrote and printed at this Day: They were fallible Men, it seems, and we take the Liberty not only to differ from them in Religious Opinions, but to condemn them and their Opinions too; and I must presume that in taking these Freedoms in thinking and speaking about Matters of Faith or Religion, we are in the Right: For, tho' it is said there are very great Liberties of this Kind taken in New-York, yet I have heard of no Information preferred by Mr. Attorney for any Offences of this Sort: From which I think it is pretty clear, That in New-York, a Man may make very free with his God, but he must take special Care what he says of his Governour: It is agreed upon by all Men that this is a Reign of Liberty, and while Men keep within the Bounds of Truth, I hope they may with Safety both speak and write their Sentiments of the Conduct of Men in Power, I mean of that Part of their Conduct only, which affects the Liberty or Property of the People under their Administration; were this to be denied, then the next Step may make them Slaves: For what Notions can be entertained of Slavery, be yound that of suffering the greatest Injuries and Oppressions, without the Liberty of complaining; or if they do, to be destroyed, Body and Estate, for so doing? It is said, and insisted on by Mr. Attorney, That Government is a sacred Thing; That it is to be supported and reverenced; It is Government that protects our Persons and Estates: That prevents Treasons, Murdey, Robberge, Riots, and all the Train

and Estates; That prevents Treasons, Murders, Robberies, Riots, and all the Train of Evils that overturns Kingdoms and States, and ruins particular Persons; and if those in the Administration, especially the Supreme Magistrate, must have all their Conduct consured by private Men, Government cannot subsist: This is called a Licenticusness not to be tolerated: It is said, That it brings the Rulers of the People into Contempt, and their Authority not to be regarded, and so in the End the Laws cannot be put in Execution: These I say, and such as these, are the general Topicks insisted upon by Men in Power, and their Advocates: But I wish it might be confidered at the same Time, how often it has happened, that the Abuse of Power has been the primary Cause of these Evils, and that it was the Injustice and Oppression of these great Men, which has commonly brought them into Contempt with the People: The Crast and Art of such Men is great, and who, that is the least acquainted with History or Law, can be ignorant of the specious Pretences, which have often been made use of by Men in Power, to introduce arbitrary Rule, and destroy the Liberties of a free People: I will give two Listances; and as they are Authorities nor to be denied, nor can be minunderstood, I presume

they will be sufficient.

The first is the Statute of 3d. of Hen. 7. Cap. 1. The Preamble of the Statute will prove all, and more than I have alledged: It begins, 'The King our Sovereign Lord, remembereth how by unlawful Maintenances, giving of Liveries, Signs and Tokens, &c. untrue Demeanings of Sheriffs in making of Pannels, and other untrue Returns, by taking of Money, by Injuries, by great Riots and unlawful Affemblies; the Policy and good Rule of this Realm is almost subdued; and for the not punishing these Inconveniencies, and by Occasion of the Premisses, little or nothing may be found by Inquiry &c. to the Increase of Murders, &c. and Unsureties of all Men living, and Losses of their Lands and Goods.

Here is a fine and specious Pretence for introducing the Remedy, as it is cal-

led, which is provided by this Act, that is, instead of being lawfully accused by 24 good and lawful Men of the Neighbourhood, and afterwards tried by 12 like lawful Men; here is a Power given to the Lord Chancellor, Lord Treasurer, the Keeper of the King's privy Seal, or two of them, calling to them a Bishop, a temporal Lord, and other great Men mentioned in the Ast, (who, it is to be observed

observed, were all to be Dependants on the Court) to receive Information against any Person for any of the Misbehaviours recited in that Act, and by their Difference to examine, and to punish them according to their Demerit.

The second Statute I proposed to mention, is the 11th of the same King, Chap. 3d. the Preamble of which A&t has the like tair Pretences as the former; For the King calling to his Remembrance the good Laws made against the receiving of Liveries, &c. unlawful Extortions, Maintenances, Embracery, &c. unlawful Games; &c. and many other great Enormities, and Offences, committed against many good Statutes, to the Dypleasure of Almighty God, which, the Act says, could not, nor yet can, be conveniently punished by the due Order of the Law, except it were first found by 12 Men, &c. which, for the Causes aforesaid, will not find, nor yet present the Truth: And therefore the same Statute directs, that the Justices of Assistance and Austices of the Pedeci shall super historication for the King before their reads have Justices of the Peace, stall, upon Information for the King before them made, have full Power, by their Discretion, to hear and determine all such Offences:

Here are two Statutes that are allowed to have given the deepest Wound to the Liberties of the People of England, of any that I remember to have been made, unless it may be said, that the Statute made in the Time of Henry 8th, by which his Proclamations were to have the Effect of Laws, might in its Consequence be worse: And yet we see the plausible Pretences found out by the great Men to procure these Acts: And it may justly be said, that by those Pretences the People of England were cheated or awed into the Delivering up their ancient and facrea Right of Trials by Grand and Petit Juries: I hope

to be excused for this Expression, seeing my Lord Coke calls it an unjust and strange Act, that tended in its Execution to the great Displeasure

of Almighty Gol, and the utter Subversion of the common Law.

There, I think, make out what I alledged, and are flagrant Instances of the Instuence of Men in Power, even upon the Representatives of a whole Kingdom. From all which I hope it will be agreed, that it is a Duty which all good Men owe to their Country, to guard against the unhappy Influence of ill Men, when intrusted with Power, and especially against their Creatures and Dependants, who, as they are generally more necessitous, are surely more covetous and cruels. But it is worthy of Observation, that the spirit of Liberty was born down and oppressed in England at that Time, yet it was not lost; for the Parliament hald hold of the first Opportunity to free the Subjects from the many infussers. l'aid hold of the first Opportunity to free the Subjects from the many insuffera-ble Oppressions and Outrages committed upon their Persons and Edates by Cofour of these Acts, the last of which being deemed the most grievous, was repealed in the first Year of Hen. 8th. Tho it is to be observed, that Hen. 7th. and his Creatures reap'd such great Advantages by the grievous Oppressions and Exactions, grinding the Faces of the poor Subjects, as my Lord Coke says, by Colour of this Statute by Information only, that a Repeal of this Act could never be obtained during the Life of that Prince: The other Statute being the favourite Law for supporting arbitrary Power, was continued much longer: The Execution of it was by the great Men of the Realm; and how they executed it, the Sense of the Kingdom, expressed in the 17th of Charles 1st. (by which the Court of Star Chamber, the Soil where Informations grew rankest) will best declare: In that Statute Magna Charta, and the other Statutes made in the Time of Edw. 3d. which I think, are no less than five, are particularly enumerated as Acts, by which the Liberties and Priviledges of the People of England were secured to them, against such oppressive Courts as the Star Chamber, and others of the like Jurisdiction; and the Reason assigned for their pulling down the Star Chamber, is, That the Proceedings, Censures and Decrees of the Court of Star Chamber, even tho' the great Men of the Reason, nay and a Bishop too (holy Man) were Judges, bad by Experience been found to be an intolerable Burthen to the Subject, and the Means to introduce an arbitrary Power and Government: And therefore that Court, was taken away, with all the other Courts in that Statute mentioned, having like Jurisdiction. I don's

I don't mention this Statute, as if by the taking away the Court of Star Chamber, the Remedy for many of the Abuses or Offences censured there, was Inkewise taken away; no, I only intend by it to shew, that the People of England saw clearly the Danger of trutting their Liberties and Properties to be tried, even by the greatest Men in the Kingdom, without the Judgment of a Jury of their Equals: They had felt the terrible Effects of leaving it to the Judgment of these great Men to say what was Jeandalous, feditious, false or ironical: And if the Parliament of England thought this Power of judging was too great to be trusted with Men of the first Rank in the Kingdom, without the Aid of the Jury, how sacred soever their Characters might be, and therefore restored to the People their control of the People of the Peop their original Right of Trial by Juries: I hope to be excused for infisting, that by the Judgment of a Parliament, from whence no Appeal lies, the Jury are the proper judges of what is false at least, if not of what is scandalous and seditions: This is an Authority not to be denied, it is as plain as it is great, and to fay, that this Act indeed did restore to the People Trials by Juries, which was not the Practice of the Star Chamber, but that did not give Jurors any new Authority, or any Right to try Matters of Law: I say this Objection will not avail; for I must insist, that where Matter of Law is complicated with Matter of Fact, the Jury have a Right to determine both: As for Instance, upon Indictment for Murder, the Jury may, and almost constantly do, take upon them to judge whether the Evidence will amount to Murder or Mansaughter, and find accordingly; and I must say, I cannot see why in our Case, the Jury have not at least as good a Right to say whether our News Papers are a Libel or no Libel, as another Jury has to say whether killing of a Man is Murder or Man-flaughter: The Right of the Jury to find such a Verdict as they in their Confcience do think is agreeable to their Evidence, is supported by the Authority of Busiel's Case, in Vaghan's Reports, Page 135, beyond any Doubt: For, in the Argument of that Case, the Chief Justice who delivered the Opinion of the Court, lays it down for Law, That in all General Issues, as upon Non Cul. in Trespass, Non Tort. Nul Dissert in As-vaughan's Rep. p. 1502 size, &c. tho' it is Matter of Law, whether the Defendant is a Trespasser, a Dissert &c. in the particular Cases in Issue Not the Street Sc. Trespasser, a Disseizer, &c. in the particular Cases in Issue, yet the Jury find not (as in a special Verdict) the Fact of every Case, leaving the Law to the Court; but find for the Plaintiff or Defendant upon the Issue to be tried, wherein they resolve both Law and Fact complicately: It appears by the same Case, that tho' the discreet and lawful Assistance of the Judge, by Way of Advice to the Jury, may be useful; yet that Advice or Direction ought always to be upon Supposition and not positive, and upon Coercion: The Reason given in the same Page 144-Book is, Because the Judge (as Judge) cannot know what the Evidence is which the Jury have, (that is) he can only know the Evidence given in Court; but the Evidence which the Jury have, may be of their own Knowledge, as they are returned at the Neighbourhood. They want also know from their and Knowledge, that he ed of the Neighbourhood: They may also know from their own Knowledge, that what is sworn in Court, is not true; and they may know the Witnesses to be stigmatized, to which the Court may be Strangers: But what is to my Purpose, is, That suppose the Court did really know all the Evidence which the Jury know, yet in that Case it is agreed, That the Judge and Jury may differ in the Refult of their Evidence, as well as two Judges may, which often happens: And in Page 148, the Judge subjoins the Reason, why it is no Crime for a Jury to differ in Opinion from the Court, where he says, That one Man cannot see with another's Eye, nor hear by another's Ear.; no more can a Man conclude or infer the Thing by another's Understanding or Reasoning: From all which I insist, it is very plain, That the Jury are by Law at Liberty (without any Affront to the Judgment of the Court) to find both the Law and the Fact in our Case, as they did in the Case I am speaking to, which I will beg Leave just to mention, and it was this, Mr. Penn and Mead, him and weak and having the property and beginning to the court of the cou being Quakers, and having met in a peaceable Manner, after being shut out of their Meeting-House, preached in Grace-Church Street, in London, to the People

of their own Persuasion, and for this they were indicted; and it was said, That

they with other Persons, to the Number of 300, unlawfully and tumultuously assembled, to the Disturbance of the Peace, &c. To which they pleaded Not Guilty: And the Petit Jury being sworn to try the Issue between the King and the Prisoners, that is, whether they were Guilty, according to the Form of the Indictment? Here there was no Dispute but they were affembled together, to the Number mentioned in the Indictment: But Whether that Meeting together was rioteufly, tunul-tuoufly, and to the Disturbence of the Peace? was the Question: And the Court told the Jury it was, and ordered the Jury to find it so; For (faid the Court) the Meeting was the Matter of Fast, and that is confessed, and we tell you it is unlawful, for it is against the Statute; and the Meeting being unlawful, it follows of Course that it was tumultuous, and to the Disturbance of the Peace: But the Jury did not think fit to take the Court's Word for it, for they could neither find Riot, Tumult, or any Thing tending to the Breach of the Peace committed at that Meeting; and they acquitted Mr. Penn and Mead: In doing of which they took upon them to judge both the Law and the Fast, at which the Court (being them-felves true Courtiers) were so much offended, that they fined the Jury 40 Marks a-piece, and committed them till paid: But Mr. Bushel, who valued the Right of a Juryman, and the Liberty of his Country more than his own, refused to pay the Fine, and was refolved (tho' at a great Expence and Trouble too) to bring, and did bring, his Habeas Corpus, to be relieved from his Fine and Imprisonment, and he was released accordingly; and this being the Judgment in his Case, it is established for Law, That the Judges, how great soever they be, have no Right to fine, imprison or punish a Jury, for not finding a Verdict according to the Direction of the Court: And this I hope is sufficient to prove, That Jurymen are to see with their own Eyes, hear with their own Ears, and make use of their own Consciences and Understandings, in judging of the Lives, Liberties, or Estates of their Fellow-Subjects: And so I have done with this Point.

This is the fecond Information for Libelling of a Governor that I have known in America: And the first, tho'it may look like a Romance, yet as it is true, I will beg Leave to mention it. Governor Nicholson, who happened to be offendwith one of his Clergy, met him one Day upon the Road, and as was usual with him (under the Protection of his Commission) used the poor Parson with the worst of Language, threatned to cut off his Ears, slit his Nose, and at last to shoot him through the Head: The Parson being a reverend Man, continued all this Time uncovered in the Heat of the Sun, until he found an Opportunity to fly for it, and coming to a Neighbours House, felt himself very ill of a Fever, and immediately writes for a Doctor; and that his Physician might the better judge of his Distemper, he acquainted him with the Usage he had received; concluding, that the Governor was certainly mad, for that no Man in his Senses would have behaved in that Manner: The Doctor unhappily shews the Parson's Letter; the Governor came to hear of it; and so an Information was preferred against the poor Man, for saying, He believed the Governor was mad; and it was laid in the Information to be false, scandalous, and wicked, and wrote with en Intent to move Sedition among the People, and bring his Excellency into Contempt: But by an: Order from the late Queen Anne, there was a Stop put to that Profecution, with fundry others fet on Foot by the fame Governor, against Gentlemen of the greatest Worth and Honor in that Government.

And may not I be allowed, after all this, to fay, That by a little Countenance almost any Thing which a Man writes, may, with the Help of that useful Term of Art, called an Innuendo, be construed to be a Libel, according to Mr Attorney's Definition of it, That whether the Words are spoke of a Person of a public Charatter, or of a private Man; whether dead or living, good or bad, true or false, all make a Libel; for according to Mr. Attorney, after a Man hears a Writing read, or reads and repeats it, or laughs at it, they are all punishable. It is true, Mr. Attorney is so good as to allow, after the Party knows it to be a Libel, but he is not

so kind as to take the Man's Word for it.

Mr.

Mr. Hamilton. If a Libel is understood in the large and unlimited Sense urged by Mr. Attorney, there is scarce a Writing I know that may not be called a Libel, or scarce any Person safe from being called to an Account as a Libeller: For Moses, meek as he was, libelled Cain, and who is it that has not libelled the Devil! For according to Mr. Attorney, it is no Justification to say one has a bad Name: Echard has libelled our good King William: Burnet has libelled among many others, King Charles, and King James; and Rapin has libelled them all: How must a Man speak or write? Or what must he hear, read, or sing? Or when must he laugh, so as to be secure from being taken up as a Libeller? I sincerely believe, that were some Persons to go through the Streets of New-York now-a-days, and read a Part of the Bible, if it was not known to be fuch, Mr. Attorney, with the Help of his Innuendos, would easily turn it into a Libel: As for Instance, Isaiah ix. 16. The Leaders of the People cause them to err, and they that are led by them are destroyed: But should Mr. Attorney go about to make this a Libel, he would read it thus; The Leaders of the People [Innuendo, the Governor and Council of New-York] cause them [Innuendo, the People of this Province] to err, and they [the People of this Province meaning] that are led by them [the Governor and Council meaning] ere destroyed, [Innuendo, are deceived, into the Loss of their Liberty] which is the worst Kind of Destruction. Or if fome Persons should publicly repeat, in a Manner not pleasing to his Betters, the tenth and eleventh Verses of the sifty-sixth Chapter of the same Book, there Mr. Attorney would have a large Field to display his Skill, in the artful Application of his Innuendos: The Words are, His Watchmen are all blind, they are ignorant, &c. Yea, they are greedy Dogs, that can never have enough: But to make them a Libel, there is according to Mr. Attorney's Doctrine, no more wanting but the Aid of his Skill in the right adapting his Innuendos: As for Instance; His Watchmen [Innuendo, the Governor's Council and Affembly] are blind, they are ignorant, [Innuendo, will not see the dangerous Designs of his Excellency] Yea, they [the Governor and Council meaning] ere greedy Dogs, which can never have enough, [Innuendo, enough of Riches and Power]. Such an Instance as this it seems is only fit to be laughed at., but I may appeal to Mr. Attorney himself, whether these are not at least equally proper to be applied to his Excellency and his Ministers, as some of the Inferences and Innuendos in his Information against my Client: Then if Mr. Attorney is at liberty to come into Court, and file an Information in the King's Name without Leave, who is secure, whom he is pleased to prosecute as a Libeller? And as the Crown Law is contended for in bad Times, there is no Remedy for the greatest Oppression of this Sort, even tho' the Party prosecuted is acquitted with Honor: And give me leave to say, as great Men as any in Britain, have boldly afferted, That the Mode of Prosecuting by Information (when a Grand Jury will not find Billa vera) is a national Grievance, and greatly inconsistent with that Freedom, which the Subjects of England enjoy in most other Cases. But if we are so unhappy as not to be able to ward off this Stroke of Power directly, yet let us take Care not to be cheated out of our Liberties, by Forms and Appearances; let us always be fure that the Charge in the Information is made out clearly, even beyond a Doubt; for tho' Matters in the Information may be called Form upon Trial, yet they may be, and often have been found to be Matters of Substance upon giving Judgment.

Gentlemen; The Danger is great, in Proportion to the Mischief that may happen, through our too great Credulity: A proper Confidence in a Court is commendable; but as the Verdict (what ever it is) will be yours, you ought to refer no Part of your Duty to the Discretion of other Persons. If you should be of Opinion, that there is no Falshood in Mr. Zenger's Papers, you will, nay (pardon me for the Expression) you ought to say so; because you don't know whether others (I mean the Court) may be of that Opinion: It is your Right to do so, and there is much depending upon your Resolution, as well as upon your Integri-

The loss of Liberty to a generous Mind, is worse than Death; and yet we know there have been those in all Ages, who for the sake of Preferment, or some imaginary Honor, have freely lent a helping Hand to oppress, nay to destroy their Country. This brings to my Mind that saying of the immortal Brutus, when he looked upon the Creatures of Cæsar, who were very great Men, but by no Means good Men. "You Romans, (said Brutus) if yet I may call you so, "consider what you are doing: Remember that you are affisting Cæsar to forge those very Chains which one Day he will make yourselves wear." This is what every Man (that values Freedom) ought to consider: He should act by Judgment, and not by Affection or Self-Interest; for, where those prevail, no Ties of either Country or Kindred are regarded: As upon the other Hand, the Man who loves his Country, prefers its Liberty to all other Considerations, well

knowing that without Liberty, Life is a Mifery.

A famous Instance of this, you will find in the History of another brave Roman of the same Name, I mean Lucius Junius Brutus, whose Story is well known, and therefore I shall mention no more of it, than only to shew the Value he put upon the Freedom of his Country. After this great Man, with his Fellow Citizens whom he had engaged in the Cause, had banished Tarquin the Proud, the last King of Rome, from a Throne which he ascended by inhuman Murders, and posfessed by the most dreadful Tyranny and Proscriptions, and had by this Means, amassed incredible Riches, even sufficient to bribe to his Interest, many of the young Nobility of Rome, to affift him in recovering the Crown; but the Plot being discovered, and principal Conspirators were apprehended, among whom were two of the Sons of Junius Brutus. It was absolutely necessary that some should be made Examples of, to deter others from attempting the restoring of Tarquin, and destroying the Liberty of Rome. And to effect this it was, that Lucius Junius Brutus, one of the Consuls of Rome, in the Presence of the Roman People, sat. Judge and condemned his own Sons, as Traitors to their Country: And to give the last Proof of his exalted Virtue, and his Love of Liberty: He with a Firmness of Mind, (only becoming so great a Man) caused their Heads to be struck off in his own Presence; and when he observed that his rigid Virtue, occasioned a fort of Horror among the People, it is observed he on'y faid, " My Fellow-" Citizens, do not think that this proceeds from any Want of natural Affection: "No, The Death of the Sons of Brutus can affect Brutus only; but the Loss of Libery will affect my Country." Thus highly was Liberty esteemed in those Days, that a Father could sacrifice a Son to save his Country. But why do I go to Heathen Rome, to bring Instances of the Love of Liberty, the best Blood in Britain has been shed in the Cause of Liberty; and the Freedom we enjoy at this Day, may be said to be (in a great Measure) owing to the glorious Stand the famous Hamden, and other of our Countrymen, made against the arbitrary Demands, and illegal Impositions, of the Times in which they lived; who rather than give up the Rights of Englishmen, and submit to pay an illegal Tax of no more I think, than Three Shillings, resolved to undergo, and for the Liberty of their Country did undergo the greatest Extremities, in that arbitrary and terrible Court of Star Chamber, to whose arbitrary Proceedings, (it being composed of the principal Men of the Realm, and calculated to support arbitrary Government) no Bounds or Limits could be set, nor could any other Hand remove the Evil but a Parlia-

Power may justly be compared to a great River, while kept within its due Bounds, is both Beautiful and Useful; but when it overflows its Banks, it is then too impetuous to be stemed, it bears down all before it, and brings Distruction and Desolation wherever it comes. If then this is the Nature of Power, let us at least do our Duty, and like wise Men (who value Freedom) use our utmost Care to support Liberty, the only Bulwark against lawless Power, which in all Ages has sacrificed to its wild Lust and boundless Ambition, the Blood of the best Men that ever lived.

I hope to be pardoned, Sir, for my Zeal upon this Occasion; it is an old and wise Caution, That when our Neighbour's House is on Fire, we ought to take Care of our own. For tho' blessed be God, I live in a Government where Liberty is well understood, and freely enjoyed; yet Experience has shewn us all (I am sure it has to me) that a bad Precedent in one Government, is soon set up for an Authority in another; and therefore I cannot but think it mine, and every honest Man's Duty, that (while we pay all due Obedience to Men in Authority) we ought at the same Time to be upon our Guard against Power, wherever we apprehend that

it may affect ourselves or our Fellow-Subjects.

I am truly very unequal to such an Undertaking on many Accounts: And you see I labour under the Weight of many Years, and am borne down with great Infirmities of Body; yet old and weak as I am, I should think it my Duty, if required, to go to the utmost Part of the Land, where my Service could be of any Use in affifting to quench the Flame of Profecutions upon Informations, fet on Foot by the Government, to deprive a People of the Right of remonstrating (and complaining too) of the arbitrary Attempts of Men in Power. Men who injure and oppress the People under their Administration, provoke them to cry out and com-plain, and then make that very Complaint the Foundation for new Oppressions and Profecutions: I wish I could say there were no Instances of this Kind. But to conclude; the Question before the Court, and you Gentlemen of the Jury, is not of small nor private Concern; it is not the Cause of a poor Printer, nor of New-York alone, which you are now trying: No! It may in its Confequence affect every Freeman that lives under a British Government on the Main of America: It is the best Cause: It is the Cause of Liberty, and I make no Doubt but your upright Conduct this Day, will not only entitle you to the Love and Esteem of your Fellow-Citizens, but every Man who prefers Freedom to a Life of Slavery will blefs and honor you, as Men who have baffled the Attempt of Tyranny, and by an impartial and uncorrupt Verdict, have laid a noble Foundation for fecuring to our-felves, our Posterity, and our Neighbours, That, to which Nature and the Laws of our Country have given us a Right,----The Liberty----both of exposing and opposing arbitrary Power, (in these Parts of the World, at least) by speaking and writing Truth.

Here Mr. Attorney observed, that Mr. Hamilton had gone very much out of the Way, and had made himself and the People very merry: But that he had been citing Cases not at all to the Purpose: He said, there was no such Cause as Mr. Bushel's or Sir Edward Hale's before the Court; and he could not find out what the Court or Jury had to do with Dispensations, Riots, or unlawful Assemblies: All that the Jury had to consider of, was Mr. Zenger's printing and publishing two scandalous Libels, which very highly reflected on his Excellency and the principal Men concerned in the Administration of this Government, which is confessed. [That is, the Printing and Publishing of the Journals set forth in the Information is confessed]. And concluded, That as Mr. Hamilton had confessed the printing, and there could be no doubt but they were scandalous Papers, highly reflecting upon his Excellency, and the principal Magistrates in the Province; And therefore he made no doubt but the Jury would find the Defendant Guilty, and would refer to the Court for their Direction.

Mr. Chief Justice. Gentlemen of the Jury: The great Pains Mr. Hamilton has taken to shew how little Regard Juries are to pay to the Opinion of the Judges; and his insisting so much upon the Conduct of some Judges in Trials of this Kind; is done no doubt with a Design that you should take but little Notice of what I might say upon this Occasion. I shall therefore only observe to you, that as the Facts or Words in the Informatin are confessed, the only Thing that can come in Question before you is, Whether the Words as set forth in the Information make a Libel: And that is a Matter of Law, no doubt, and which you may leave to the Court. But I shall trouble you no further with any Thing more of my own, but read to you the Words of a learned and upright Judge* in a Case of the like Nature.

To fay that corrupt Officers are appointed to administer Affairs, is certainly a Reflection or the Government. If People should not be called to account for possessing the People with an ill Opinion of the Government, no Government can subsist; for it is very necessary for all Governments that the People should have a good Opinion of it: And nothing can be worse to any Government, than to endeavour to procure Ani-mosities, as to the Management of it: This has been always look'd upon as a Crime,

Monogovernment can be safe without it be punished.

Now you are to consider, whether these Words I have read to you, do not tend to beget an ill Opinion of the Administration of the Government? To tell us, that those that are employ'd know Nothing of the Matter, and those that do know are not employ'd. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Interest, and not to their Fitness for the Places; this is the Purport of these Papers.

Mr. Hamilton, I humbly beg your Honour's Pardon: I am very much misaperehended, if you suppose what I said was so designed.

Sir, you know, I made an Apology for the Freedom I sound myself under a

Sir, you know, I made an Apology for the Freedom I found myself under a Necessity of using upon this Occasion. I said, there was Nothing personal de-

figned; it arose from the Nature of our Defence.

The Jury withdrew, and in a small Time returned, and being asked by the Clerk whether they were agreed of their Verdict, and whether John Peter Zenger was guilty of printing and publishing the Libels in the Information mentioned?

They are two red by Thermas Hunts their Formace Med Guilte, the They answered by Thomas Hunt, their Foreman, Not Guilty, Upon which there were three Huzza's in the Hall which was crowded with People, and the next Day I was discharged from my Imprisonment.

ROMENICANO EN CANCANCANA SE ROMESMO SE ROMES

APPEN

T a Common Council, held at the City-Hall of the said City, on Tuesday the Sixteenth Day of September, Anno Domini, 1735. New-York.

PRESENT.

Paul Richards, Esq; Mayor. Gerardus Stuyvesant, Esq; Deputy Mayor. Daniel Horsmanden, Esq; Recorder.

ALDERMEN.

William Roome, Esq; John Walter, Esq; Stephen Bayard, Esq; Simon Johnson, Esq; Christopher Fell, Efq; Fobannes Burger, Elq;

ASSISTANTS.

Mr. John Moore, Mr. John Fred, Mr. Johannes Waldron, Mr. Charles Le Roux, Mr. Ede Myer, Evert Byvank.

Ordered, That Andrew Hamilton, Esq; of Philadelphia, Barrister at Law, be presented with the Freedom of this Corporation; and that Alderman Bayard, Alderman Johnson, and Alderman Fell, be a Committee to bring in a Draught thereof.

City of Monday the twenty Ninth Day of September, being the Feast Day of St. Michael the Arch-angel, Anno Domini, 1735.

PRESENT.

Paul Richards, Esq; Mayor. Daniel Horsmanden, Esq; Recorder.

ALDERMEN.

William Roome, Esq; John Walter, Esq; Stephen Bayard, Esq; Simon Johnson, Esq; Christopher Fell, Esq; Johannes Burger, Esq;

ASSISTANTS.

Mr. Johannes Waldron, Mr. Charles Le Roux, Mr. Henry Bogert, Mr. John Fred, Mr. Evert Byvank.

Stephen Bayard, Simon Johnson, and Christopher Fell, Esquires Aldermen, to whom it was referred to prepare the Draught of the Freedom of this Corporation, to be presented to Andrew Hamilton, Esq; make their Report thereon, in the Words following (to wit.) That they have prepared the Form of the Grant, to the said Andrew Hamilton, Esq; of the Freedom of the City of New-York, in these Words (to wit.)

City of Mew-York, convened in Common Council, To all to whom these Presents shall come Greeting. WHEREAS Honour is the just Reward of Virtue, and publick Benefits demand a publick Acknowledgment. We therefore, under a grateful Sense of the remarkable Service, done to the Inhabitants of this City and Colony, by Andrew Hamilton, Esq; of Pemsylvania, Barritter at Law, by his learned and generous Desence of the Rights of Mankind, and the Liberty of the Press, in the Case of John Peter Zenger, lately tried on an Information exhibited in the Supream-Court of this Colony, do by these Presents, bear to the said Andrew Hamilton, Esq; the publick Thanks of the Freemen of this Corporation for that signal Service, which he chearfully undertook under great Indisposition of Body, and generously performed, resusing any Fee or Reward: And in Testimony of our great Esteem for his Person, and Sense of his Merrit, do hereby present him with the Freedom of this Corporation. These are therefore to Certify and Declare, that the said Andrew Hamilton, Esq; is hereby admitted, received and allowed a Freedom and Citizen of the said City: To Have, Hold, Eujoy and Partake of all the Benefits Liberties, Previleges, Freedoms and Immunities whatsoever granted or belonging to a Freeman and Citizen of the said City. In Testimony whereof, the Common Council of the said City, to be hereunto affixed this Twenty Ninth Day of September, Anno Domini, One Thousand Seven Hundred and Thirty Five.

By Order of the Common Council,

William Sharpas, Clerk.

And we do further Report, that sundry of the Members, of this Corporation, and Gentlemen of this City, have voluntarily contributed sufficent for a Gold Box of five Ounces and an Half, for Inclosing the Seal of the Jaid Freedom; upon the Lid of which, we are of Opinion should be engraved the Arms of the City of New-York. Witness Our Hands, this Twenty Ninth Day of September, 1735,

Stephen Bayard, Simon Johnson, Christopher Fell:

Which

Which Report is approved by this Court, and Ordered, That the Freedom and Box be forthwith made, purfuant to the faid Report, and that Mr. Sharpas, the Common Clerk of this City, do affix the Seal to the same Freedom, and inclose it in the said Box.

Mr. Alderman Bayard going to Philadelphia, and offering to be the Bearer of the said Freedom to Mr. Hamilton, Ordered, That Mr. Sharpas deliver it to Alderman Bayard for that Purpose; and that Alderman Bayard do deliver it to Mr. Hamilton, with Assurances of the great Esteem, that this Corporation have for his Person and Merit.

City of J. A T a Common Council, held at the City-Hall of the faid City, on Wednesday the fifteenth Day of October, Anno Domini, 1735.

PRESENT.

Paul Richards, Esq; Mayor. Daniel Horsmanden, Esq; Recorder.

ALDERMEN;

John Walter, Esq; Simon Johnson, Esq;

William Roome, Esq; Johannes Burger, Esq;

ASSISTANTS.

Mr. Johannes Waldron, Mr. Abraham De Peyster, Mr. Gerardus Beekman, Mr. Peter Stoutenburgh. Mr. Henry Bogert,

Ordered, That the Freedom, granted by this Corporation, to Andrew Hamilton, Esq; with the Report of the Committee, for preparing a Draught of the same and the Order of this Court thereon, may be printed.

William Sharpas.

Round on the Lid of the Box mentioned in the above aid Report and Order, there is ingraved not only the Arms of the City of New-York, but also this Motto in a Garter;

DEMERSE LEGES-TIMEFACTA LIBERTAS-HEC TANDEM EMERGUNT.

On the inner Side of the Lid of the Box, shewing itself at the same Time with the Certificate of the Freedom, there is Engraven in a slying Garter, these Words,

Non Nummis, - Virtute Paratur.

As an Incentive to publick Virtue, on the Front of the Rim of the faid Box, there is Engraven a Part of Tully's Wish;

ITA CUIQUE EVENIAT, UT DE REPUBLICA MERUIT.

Which Freedom and Box, was presented in the Manner that had been directed, and gratefully accepted by the said Andrew Hamilton, Esquire.

FINIS.











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